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**The Acts of 1917
of the
State of Pennsylvania**

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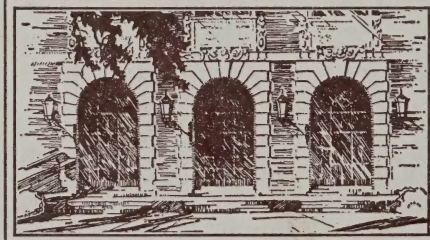
**Intestate Act, Wills Act, Fiduciaries
Act, Orphans' Court Partition
Act, Revised Price Act,
Register of Wills Act,
Orphans' Court Act.**

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State of Pennsylvania

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**Intestate Act, Wills Act, Fiduciaries
Act, Orphans' Court Partition
Act, Revised Price Act,
Register of Wills Act,
Orphans' Court Act.**

PREPARED BY

HON. JOHN MARSHALL GEST, of the Orphans' Court of Philadelphia County; HON. THOMAS J. BALDRIDGE, President Judge of Blair County; and HON. GEORGE E. ALTER, of the Allegheny County Bar, Commissioners
Appointed under Authority of the
Act of 1915 P. L. 177.

TOGETHER WITH

The Preliminary Notes of Explanation of the Several Acts taken from the Report of the Commissioners to the Legislature of 1917.

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1917

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UNIVERSITY OF ILLINOIS
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1917 PRELIMINARY NOTE TO THE SEVERAL ACTS.

INTESTATE ACT.

It is well at this point to note two important changes which affect the entire Act. The first is that the same scheme of inheritance is provided for both real and personal estate, thus ignoring the distinction that exists at present by which the interests of the surviving spouse or of parents are in some cases restricted to a life interest in the realty while their interests in the personal estate are absolute.

The reason for this distinction is purely historical; the common law rules of inheritance of real estate came through the feudal law, while the statutes of distribution of personal estate were derived through the Roman law, and were in England administered by the Ecclesiastical Courts and the Court of Chancery. Many of the resulting distinctions have long since been abolished in this Commonwealth, and it is now suggested that a further step be taken, in thus providing that the interests of those entitled shall be in fee in both realty and personalty. However venerable the origin of the present law may have been, the Commissioners think that the difference has now become purely arbitrary and produces an artificial inequality. It is a pure accident whether at the moment of a man's death his property consists of lands or stocks and bonds, of ground rents issuing out of land or mortgages secured upon lands; all these are merely forms of property and the rights of heirs and next of kin should not be affected by matters of accident rather than of substance. Land, owing chiefly to its characteristic of immobility, may properly, and indeed sometimes must, be subject to different rules from personalty in such matters as

the method of taxation or conveyance, the regulation of liens, mortgages or pledges; but in such cases there is an inherent reason for the difference, which finds no place in a logical plan of inheritance or succession. We, therefore, recommend to the Legislature that all property where the owner dies intestate shall descend or be distributed according to one system. This, in the words of a distinguished legal scholar, Frederic W. Maitland, "is what a civilized jurisprudence requires, and here as always scientific jurisprudence is on the side of convenience and common sense."

The second important change which the Commissioners recommend is that the reciprocal rights of husband and wife in each other's intestate estate should be the same. Under the present law, the widow, if there be no issue, takes one-half of the real estate for life and one-half of the personal estate absolutely, and in addition, under the recent Act of April 1, 1909, P. L. 87, 5 Stew. Purd. 6476, five thousand dollars in real or personal estate as she may elect, before the division of the remainder of the estate. If there be issue, the widow takes one-third of the real estate for life and one-third of the personal estate absolutely. The surviving husband, on the other hand, if there be no issue takes all his wife's real estate for life as tenant by the curtesy, and all the personal estate absolutely, while if there be issue the husband divides the personal estate with the children share and share alike, that is he takes a child's share. These provisions are the resultant of the gradual growth and changes in our law during many years and their complexity is in practice greatly increased by the different rights given to the surviving husband and wife in electing to take against the will of the other; the wife having the right to take the same share of her husband's estate real and personal as she would have taken had he died intestate; while the surviving husband, in case he elects to take against his wife's will has not the right to take as in cases of intestacy, but may choose either to take the real estate

as tenant by the curtesy or the same share of her estate as she might take of his estate, in case she took against his will. There is no apparent reason why the reciprocal rights of husband and wife in each other's intestate estate should be so different, and the Commissioners are of opinion that they should be simplified; that there should be given to the surviving husband or wife, in case of intestacy, the same right in the estate, real and personal, of the other, and the same right in cases of testacy, to take under the intestate law. The Commissioners have embodied such a provision in their draft of the new Wills Act submitted herewith, and it is suggested that these changes will reduce our law upon the subject to a symmetrical and harmonious plan.

While they are not so fundamental, other changes are recommended which deserve particular notice.

In Section 1 (*a*), it is provided that where an intestate leaves a surviving spouse and issue one child only, or descendants of one child, the spouse shall take one-half instead of one-third of the estate.

In Section 2, the special allowance of \$5000 to a surviving spouse where there is no issue is restricted to the case of actual intestacy, and no longer applies when the surviving spouse elects to take against the will. The procedure for the appraisement and setting apart of the property specially allowed is defined with greater exactness than under existing laws.

In Section 4, the rights of a surviving husband in remainder estates vested in his deceased wife are extended so as to be uniform with those of a surviving wife.

In Section 9, the distinction in the inheritance of real estate between the whole and half blood is abolished; and in Section 13 the rule at present surviving in some cases as to the restriction of inheritance to persons of the blood of the first purchaser is likewise abolished.

In Section 15, the right of inheritance in cases of illegitimacy is extended to the maternal grandfather, and illegitimate children are legitimated by the mar-

riage of their parents without the present requirement of cohabitation.

In Section 16, the rights of adopted children are more accurately defined in accordance with the present legislative policy.

In Section 23, it is provided that no murderer shall inherit from the person whom he has killed—the present law on this subject seeming to the Commissioners to be opposed to the sentiments of morality.

Both this and the proposed Wills Act are made operative only upon the estates of persons dying on or after a day named, subsequent to the approval of the Acts.

WILLS ACT.

The present law on this subject has proved so satisfactory that the Commissioners have recommended few changes of a fundamental nature. The law however has been codified, revised, and arranged in logical form. Some important changes should, however, be indicated.

In Section 2, it is provided that the presence of dispositive words after the signature of a testator shall not, even if they are written before the execution of the instrument, invalidate that which precedes the signature.

In Section 6, the period before death when a will for religious or charitable uses may be executed has been made thirty days instead of a calendar month.

In Section 8, the appointment of testamentary guardians is regulated and the rights of father and mother rendered more uniform.

In Section 15, the law on the subject of lapsed legacies and devises has been revised and the phraseology of existing statutes amended, especially in cases where the lapse occurs in the residuary clause or bequest and an intestacy results under the present law. According to the revised act, the lapsed share will pass to the other residuary legatees or devisees.

In Section 16, the rights of adopted children are extended to cases of a general devise or legacy to children when the contrary intention does not appear by the will.

In Section 17, provision is made for the payment of pecuniary legacies from real estate not specifically devised, when no contrary intention appears in the will.

In Section 18, it is provided that a devise of mortgaged real estate shall in all cases be subject to the mortgage and that the mortgage shall not be paid from the personal estate in the absence of a direction to that effect.

In Section 19, it is provided that in the case of so-called spendthrift trusts, the income of the cestui que trust shall, notwithstanding, be liable for the support and maintenance of his wife and minor children.

In Section 21, it is provided that the marriage of a testatrix shall operate to revoke her will only pro tanto and not absolutely, thus rendering the law uniform with that regulating the subject in the case of men.

In Section 22, corresponding to Section 23 of the Intestate Act, it is provided that no murderer shall be entitled to take under the will of the person whom he has killed.

In Section 23, the rights of a surviving husband and wife, electing to take against the will of the deceased spouse, are made uniform, as has already been indicated in the Preliminary Note to the Intestate Act; and the procedure relative to such election has been revised and defined with greater particularity.

FIDUCIARIES ACT.

In this voluminous Act, the Commissioners have endeavored to arrange in one connected and systematic statute the law relating to the administration and distribution of the estates of decedents and of minors, and of trust estates, and particularly the jurisdiction, powers and procedure of the orphans' court relative to fiduciaries.

The intricacy of the subject is greater than anyone will readily believe who has not taken the trouble to examine it himself; and the labors of the Commissioners have been principally directed to the revision and consolidation of existing statutes and the repeal of those that have become obsolete, rather than to the introduction of novel legislation. The changes recommended are for the most part designed to simplify and harmonize the procedure, which, in many instances, has become complicated by the passage of numerous statutes relating to specific matters of detail.

In Section 6, the Commissioners have revised the law relative to the estates of persons presumed to be dead on account of absence for seven years or more from their last domicile, a subject that has become very complicated by the numerous statutes which have been adopted in the past thirty years, and stands in great need of revision.

In Section 11, a method of compelling the filing of an inventory has been provided, and the fees of appraisers of decedents' estates have been regulated.

In Section 12, the widow's and children's exemption has been increased from \$300 to \$500, and the whole procedure regulated.

In Section 14, the rents of real estate accruing after the death of the owner have been made assets for the payment of his debts, when the personal estate is insufficient, and the procedure has been regulated.

In Section 15, the lien of decedents' debts has been shortened from two years to one year unless continued by proper proceedings, and the law as to judgments against decedents and their representatives has been revised.

Section 16 contains the statute law relative to sales and mortgages of real estate for the payment of debts. Very little change is made, but the phraseology has been altered and the provisions of the law re-arranged in more symmetrical order. Sales for payment of debts are now governed by several Acts of Assembly, some

of the provisions of which are obsolete or inappropriate to present conditions. The procedure is regulated and the law as to confirmation of sales and the discharge of liens is particularly provided for.

In Section 18, the procedure in cases of contracts of decedents for the sale or purchase of real estate is more clearly regulated.

In Section 21, the law on the subject of interest on legacies is defined, particularly in reference to interest on legacies bequeathed in trust.

In Section 22, the Commissioners recommended a general rule upon the subject of apportionment of all periodical payments directed by will.

In Section 23, a change is recommended where there is a bequest of personal property or the proceeds of real estate for life and the life tenant does not enter security, in consequence of which a trustee is appointed. Such trustee, according to the revised act, undertakes only the usual responsibility of a trustee and is not to be considered as an insurer of the fund.

In Section 24, the jurisdiction of the orphans' court for the collection or enforcement of all legacies is made exclusive.

In Section 31, the power of testamentary trustees and guardians to lease real estate is extended and regulated.

In Section 32, elections by fiduciaries in behalf of their wards or cestuis que trust are provided for.

In Section 40, the orphans' court is empowered to authorize fiduciaries to settle or compromise litigation or disputes.

In Section 41, the power of fiduciaries to invest trust funds is extended.

In Section 42, more extensive powers are given to fiduciaries to incorporate or join in the incorporation of their decedents' business.

In Section 46 and other sections, the term for the settlement of a decedents' estate is shortened to six months instead of one year from the date of the grant

of letters testamentary or of administration; and in the same section power is expressly given to the orphans' court to have examined the assets of estates in the hands of fiduciaries. The Commissioners have also provided for express notice of the filing of accounts to be given to all persons who claim to be interested.

In this section the law is made more specific as to the place where trustees' accounts should be filed; and the jurisdiction over testamentary trustees is made exclusive in the orphans' court.

In Section 49, more specific provisions are made as to distribution of estates.

In Section 53, the law as to the removal of fiduciaries is codified and revised, and summary power is given to the court in cases that seem to require it.

In Section 58, the powers of foreign fiduciaries are revised.

In Section 59, the law on the subject of the appointment of guardians is recast and codified.

In Section 60, the law on the subject of trustees *durante absentia* is revised in connection with the law as to the estates of presumed decedents.

PARTITION ACT.

None of the subjects considered by the Commissioners have needed revision more than that of partition. The Acts of Assembly relating to this are numerous and complicated, and the Commissioners have experienced no little difficulty in their revision.

In Sections 2 and 3 of the Act as reported, express provision is made for a citation and notice to the parties interested before an inquest is awarded.

In Section 5, and in other sections of the act, more liberal provision is made for the service of citations or notices to parties resident outside of the commonwealth.

In Section 6, it is provided that the sheriff's inquisition shall consist of three men, corresponding with the number of commissioners.

In Section 7, the fees of commissioners and jurors are regulated.

In Section 13, it is provided that the allotment of purparts among the parties entitled shall be in accordance with seniority of age, in order to establish a uniform method in all cases.

In Section 43, an appeal is authorized from the decree of the court awarding an inquest, which under the present law is held to be interlocutory only.

REVISED PRICE ACT.

The Act of April 18, 1853, P. L. 503, commonly called the Price Act, from the name of its draftsman, has been extremely beneficial in its results and no fundamental changes have been considered necessary. It has, however, been amended by numerous statutes, and the Commissioners have endeavored in this revision to arrange its provisions in more symmetrical order and to consolidate in it the changes that have been made from time to time. The notes that have been annexed to the several sections in the revised act as now reported sufficiently indicate the changes that have been made in phraseology and those that are due to amendments.

REGISTER OF WILLS ACT.

In Section 5, the power of the Register to revoke letters of administration is stated, in accordance with the existing law.

In Section 8, an additional remedy is provided where any person having in his possession or under his control a testamentary paper conceals or withholds the same.

In Section 9, the Register is given additional power to subpoena witnesses.

In Section 16, the probate of a will or the refusal to probate it by a Register is made conclusive unless an appeal be taken within two years instead of three as

the present law provides, and the remedy is expressly limited to an appeal from the register's decree.

In Section 18, provision is made for the removal of contested will cases from the Register's office to the orphans' court, in order to avoid the delays that sometimes occur under the present practice.

In Section 21 (*a*), it is provided that appeals from all the judicial acts of the Register must be taken within two years, and that the period may be limited to six months in case of those parties who have actual notice by citation.

ORPHANS' COURT ACT.

In revising the statutes relative to the orphans' court the Commissioners have not found it necessary or considered it advisable to recommend any changes of serious importance in its jurisdiction or procedure.

In Section 18 (*a*), 3 and 5, the writ of *fi. fa.* issued out of the orphans' court has been limited to personal property; and in Section 18 (*e*), provision has been made for filing in the court of common pleas transcripts of orders of the orphans' court for payment of money by others than fiduciaries, and for executions thereon against real property.

In Section 20 (*b*) and (*d*), the powers of the Court in connection with the taking and perpetuation of testimony are revised and enlarged.

In Section 20 (*e*) 1, the Commissioners have inserted a provision which is understood to conform with the prevailing practice, according to which on appeals from the Register of Wills the proceedings shall be *de novo* unless by agreement the appeal be heard on the testimony taken before the Register; the court having the right, however, to require the production of witnesses.

In several sections the court is given enlarged powers with respect to the service of citations and notices to parties interested in estates, and to those amenable to the jurisdiction of the court, including attachments to enforce obedience to its orders.

In general, the method of giving notices to persons interested has been left to be fixed by general rules of court or special orders in particular cases, the Commissioners considering that fixed statutory regulations are often inappropriate.

The foregoing is a verbatim extract from the Report of the Commissioners, Hon. John Marshall Gest, Hon. Thos. J. Baldrige, and Hon. George E. Alter, to the General Assembly of the Commonwealth of Pennsylvania, dated February 1, 1917.

INTESTATE ACT.

AN ACT.

Relating to the descent and distribution of the real and personal property of persons dying intestate, and to provide for the recording and registering of the decrees of the orphans' court in connection therewith and the fees therefor.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the real and personal estate of a decedent, whether male or female, remaining after payment of all just debts and legal charges, which shall not have been sold, or disposed of by will, or otherwise limited by marriage settlement, shall be divided and enjoyed as follows: namely,—

(a) Where such intestate shall leave a spouse surviving and one child only, or shall leave a spouse surviving and no children but shall leave descendants of one deceased child, the spouse shall be entitled to one-half part of the real and personal estate.

(b) Where such intestate shall leave a spouse surviving and more than one child, or one child and the descendants of a deceased child or children, or the descendants of more than one deceased child, the surviving spouse shall be entitled to one-third part of the real and personal estate.

SECTION 2 (a) Where such intestate shall leave a spouse surviving and other kindred, but no issue, the surviving spouse shall be entitled to the real or personal estate, or both, to the aggregate value of five

thousand dollars, in addition, in the case of a widow, to the widow's exemption as allowed by law; and if such estate shall exceed in value the sum of five thousand dollars, the surviving spouse shall be entitled to the sum of five thousand dollars absolutely, to be chosen by him or her from real or personal estate, or both, and in addition thereto, shall be entitled to one-half part of the remaining real and personal estate: * *Provided*, That the provisions of this clause shall apply only to cases of actual intestacy of husband or wife, entire or partial, and not to cases where the surviving spouse shall elect to take against the will of the deceased spouse.

(b) The appraisement and setting apart of the said five thousand dollars in value of property shall be made by two appraisers, who shall be appointed by the orphans' court having jurisdiction of the accounts of the personal representatives of such intestate, and shall be sworn or affirmed to appraise the property which the surviving spouse shall choose under the provisions of this act. Each of such appraisers shall receive, as compensation for each day or fraction thereof necessarily employed in the performance of their duties, the sum of two dollars and fifty cents, and such additional amount as may be allowed by said court.

(c) Upon due proof of compliance with such requirements as to notice, by advertisement or otherwise, as may be prescribed by the orphans' court by general rule or otherwise, such court may confirm such appraisement and set part such personal or real estate, or both, to the surviving spouse, subject to claims of creditors of the decedent and to the lien of debts of the decedent.

(d) Whenever the surviving spouse of any intestate shall claim the said five thousand dollars in value, or any part thereof, under the provisions of this act, out of real estate left by said intestate, and the real estate appraised cannot be divided so as to set apart the amount so claimed in value without prejudice to or

* **BY ACT OF JULY 12, 1917, AMENDED TO READ:**

PROVIDED, That the provisions of this clause **AS TO SAID FIVE THOUSAND DOLLARS IN VALUE** shall apply only to cases of actual intestacy of husband or wife, entire or partial, and not to cases where the surviving spouse shall elect to take against the will of the deceased spouse.

spoiling the whole or any parcel of said real estate, and the appraisers shall appraise and value the same at any sum exceeding the amount so claimed, it shall be lawful for the orphans' court, to which such application shall be made, to confirm such appraisement, and to set apart for the use of the surviving spouse such real estate, conditioned, however, that the said surviving spouse shall pay the amount of the valuation or appraisement in excess of the amount so claimed within one year from the date of confirmation of such valuation. If the said surviving spouse shall refuse to take the real estate at such appraisement, or shall fail to make payment as above provided, the court, on application of any person interested, shall direct the executor or administrator to sell the same, and the procedure in such case shall be the same as is provided by law in case of sales of real estate for the payment of debts of a decedent.

(e) The real estate, if taken by the surviving spouse as aforesaid, shall vest in him or her and his or her heirs or assigns upon his or her paying the surplus over and above the sum of five thousand dollars or such part thereof as may be claimed out of the real estate to the parties entitled thereto. Where the real estate is sold as provided in clause (d) of this section, the sum of five thousand dollars or such part thereof as may be claimed out of the real estate shall be paid out of the purchase money to the surviving spouse, and the balance, after payment of costs and expenses, shall be distributed to the heirs, or other persons legally entitled thereto.

(f) In all cases where the appraisement of property, real or personal or both, is confirmed and the property set apart to the surviving spouse under the provisions of this section, said surviving spouse shall be entitled to receive for his or her own use the net rents, income, interest and dividends thereof from the date of the death of such intestate. Where the property set apart shall consist of real estate appraised at

a sum in excess of five thousand dollars or such part thereof as may be claimed out of the real estate, and the surviving spouse shall fail to pay the excess over the amount so claimed as provided in clause (d) of this section, and the property shall thereupon be sold, there shall be deducted from the sum to be paid to said surviving spouse out of the proceeds of such sale a proportionate part of the rents and income of such real estate received by such surviving spouse.

(g) Whenever the surviving spouse of any intestate shall claim the said five thousand dollars in value, or any part thereof, under the provisions of this section, out of real estate left by said intestate and lying in any county of this state other than the county wherein said intestate shall be domiciled at the time of his or her death, and the orphans' court having jurisdiction of the accounts of the personal representatives of said intestate shall be satisfied, upon petition filed, of the propriety of allowing such claim the court may make a decree authorizing such surviving spouse to file his or her petition in the orphans' court of the county wherein such real estate may lie, or, in a case where the real estate is divided by a county line, in the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there be no improvements, in either county, praying for the appointment of two appraisers.

Upon the filing of such petition, duly verified, the latter court shall appoint such appraisers, who shall be duly sworn or affirmed, and shall appraise said real estate, and shall be compensated as provided in clause (b) of this section; and proceedings shall thereupon be had in said court and subject to its supervision and control, in the same manner and with the same effect as is provided in clauses (c), (d), (e), and (f) of this section. In every such case a certified copy of the decree confirming such appraisement, or of such decree of sale and the confirmation thereof, as the case may

be, shall forthwith be filed with the clerk of the orphans' court having jurisdiction of the accounts of the personal representatives of said intestate.

The court having jurisdiction of the accounts shall in all cases have exclusive jurisdiction of the distribution of the surplus paid by such surviving spouse, or of the proceeds of such sale, after the payment of costs and expenses, as the case may be.

(h) In all cases where a decree shall be entered by any orphans' court confirming an appraisement of real estate and setting apart the same for the use of the surviving spouse, a certified copy of such decree shall be recorded in the office of the recorder of deeds of each county where such real estate shall lie, in the deed book, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name of the surviving spouse, and shall be registered in the survey bureau, or with the proper authorities empowered to keep a register of real estate, if any there be, in said county; and the charges for recording and registering shall be the same as are provided by law for similar services, and shall be paid by said surviving spouse.

SECTION 3. The shares of the estate directed by this act to be allotted to the widow shall be in lieu and full satisfaction of her dower at common law so far as relates to land of which the husband died seised; and her share in lands aliened by the husband in his lifetime without her joining in the conveyance shall be the same as her share in lands of which the husband died seised. The widow shall be entitled to the same share in an estate in remainder vested in interest in the husband during his lifetime, although the particular estate shall not terminate before the death of the husband.

SECTION 4. The shares of the estate directed by this act to be allotted to the surviving husband shall be in lieu and full satisfaction of his curtesy at common law. The surviving husband shall be entitled to the same share in an estate in remainder vested in interest in

the wife during her lifetime as in property of which she dies seised, although the particular estate shall not terminate before the death of the wife.

SECTION 5. No husband who shall have, for one year or upwards previous to the death of his wife, wilfully neglected or refused to provide for his wife, or shall have, for that period or upwards, wilfully and maliciously deserted her, shall have the right to claim any title or interest in her real or personal estate after her decease, under the provisions of this act.

SECTION 6. No wife who shall have, for one year or upwards, previous to the death of her husband, wilfully and maliciously deserted her husband, shall have the right to claim any title or interest in his real or personal estate after his decease, under the provisions of this act.

SECTION 7. The real and personal estate of such intestate, not hereinbefore given to the surviving spouse, if any there be, shall descend to and be distributed among his or her issue, according to the following rules and order of succession, namely,—

(a) If such intestate shall leave children, but no other descendant, being the issue of a deceased child, the estate shall descend to and be distributed among such children.

(b) If such intestate shall leave grandchildren but no child or other descendant, being the issue of a deceased grandchild, the estate shall descend to and be distributed among such grandchildren.

(c) If such intestate shall leave descendants in other degrees of consanguinity, however remote from him, and all in the same degree of consanguinity to him, the estate shall descend to and be distributed among such descendants.

(d) If such intestate shall leave descendants in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild or other descendant, the estate shall descend to and be distributed among them as follows, namely,—

1. Each of the children of such intestate shall receive such share as such child would have received if all the children of the intestate who shall then be dead, leaving issue, had been living at the death of such intestate.

2. Each of the grandchildren, if there shall be no children, in like manner, shall receive such share as he or she would have received if all the other grandchildren who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner, to the remotest degree.

3. In every such case, the issue of such deceased child, grandchild or other descendant, shall take, by representation of their parents respectively, such shares only as would have descended to such parents, if they had been living at the death of the intestate.

SECTION 8. In default of issue as aforesaid, the real and personal estate of such intestate, not hereinbefore given to the surviving spouse, if any there be, shall go to and be vested in the father and mother of such intestate, or if either the father or mother be dead at the time of the death of the intestate, the parent surviving shall take such real and personal estate.

SECTION 9. In default of issue, father and mother, the real and personal estate of such intestate, not hereinbefore given to the surviving spouse, if any there be, shall descend to and be distributed among the collateral heirs and kindred of such intestate, without distinction between those of the whole and those of the half blood, according to the following rules and order of succession, namely,—

(a) If such intestate shall leave brothers and sisters, or either, and no nephew or niece, or child of a deceased nephew or niece, being the issue of a deceased brother or sister, the real and personal estate shall descend to and be distributed among such brothers and sisters.

(b) If such intestate shall leave neither brother nor sister, and no child of any deceased nephew or niece,

being the issue of a deceased brother or sister, but nephews or nieces, being the children of such deceased brother or sister, the real and personal estate shall descend to and be distributed among such nephews and nieces.

(c) If such intestate shall leave neither brother nor sister, nor any nephew or niece, being the child of such deceased brother or sister, but children of deceased nephews or nieces, the real and personal estate shall descend to and be distributed among such children of deceased nephews or nieces.

(d) If such intestate shall leave brothers or sisters and nephews or nieces, being children of a deceased brother or sister, and children of deceased nephews or nieces, being issue of deceased brothers and sisters, or shall leave members of any two of these three classes, the real and personal estate shall descend to and be distributed among such brothers and sisters, nephews and nieces, and children of deceased nephews and nieces, as follows; namely:

Each brother and sister shall receive such share as he or she would have received if all the brothers and sisters who died before the intestate leaving children or children of deceased children surviving the intestate had been living at the death of the intestate.

Each nephew and niece, if the intestate shall leave any brother or sister, shall receive an equal portion of the share which his or her parent would have taken if then living, which portion shall be what he or she would have taken if all the children of his or her parent who died before the intestate leaving children surviving the intestate had been living at the death of the intestate; but if such intestate shall leave neither brother nor sister, the nephews and nieces shall take per capita.

Each child of a deceased nephew or niece, whether the intestate shall leave members of one or both of the other classes, shall receive an equal portion of the share which his or her parent would have received if living at the death of the intestate.

SECTION 10. In default of all persons hereinbefore described, the real and personal estate of the intestate shall descend to and be distributed among the grandparents or descendants of deceased grandparents of such intestate, and in default thereof to and among the next of kin to such intestate.

SECTION 11. The grandchildren of brothers and sisters and the children of uncles and aunts shall be entitled to take by representation the shares of real and personal estate which their parents would have taken if living; but, except as hereinafter provided, there shall be no representation admitted among collaterals after the grandchildren of brothers and sisters and the children of uncles and aunts.

SECTION 12. If the next of kin of an intestate, entitled to take under the provisions of this act, shall be one or more than one grandparent of such intestate, and there shall be living, at the time of the decease of such intestate, children or other descendants of any deceased grandparent, then the children or other descendants of any such deceased grandparent shall represent the grandparent so deceased, and shall take the share of real or personal estate to which such deceased grandparent would be entitled if living.

The issue of any such deceased grandparent shall take according to the following rules of succession, namely,—

(a) If there be only children of such deceased grandparent, the share of such deceased grandparent shall descend to and be distributed among such children.

(b) If there be grandchildren of such deceased grandparent and no other descendants, being children of a deceased grandchild, and no child, the share of such deceased grandparent shall descend to and be distributed among such grandchildren.

(c) If there be descendants of such deceased grandparent in any other degree however remote from him, and all in the same degree of consanguinity to him, the

share of such deceased grandparent shall descend to and be distributed among such descendants.

(*d*) If there be descendants of such deceased grandparent in different degrees of consanguinity to him, the more remote of them being the issue of a deceased child, grandchild or other descendant, the share of such deceased grandparent shall descend to and be distributed among them as follows, namely,—

1. Each of the children of such deceased grandparent shall receive such share as such child would have received if all the children of such deceased grandparent, who shall then be dead leaving issue, had been living at the death of the intestate.

2. Each of the grandchildren, if there shall be no children of such deceased grandparent, in like manner shall receive such share as he or she would have received if all the other grandchildren, who shall then be dead, leaving issue, had been living at the death of the intestate, and so in like manner to the remotest degree.

3. In every such case, the issue of such deceased child, grandchild or other descendant of such deceased grandparent shall take, by representation of their parents respectively, such share only as would have descended to such parents, if they had been living at the death of the intestate.

SECTION 13. In all cases where, under the provisions of this act, the real estate shall descend to and the personal estate shall be distributed among the next of kin of an intestate, the real as well as the personal estate shall pass to and be enjoyed by such next of kin, without regard to the ancestor or other relation from whom such estate may have come, it being the true intent and meaning of this act that the rule excluding from the inheritance of real estate persons not of the blood of the ancestor or other relation from whom such real estate descended, or by whom it was given or devised to the intestate, be abrogated, and that the heir

at common law shall not take, in any case, to the exclusion of other heirs and kindred standing in the same degree of consanguinity with him to the intestate.

SECTION 14. Except as otherwise provided in Section 15, the foregoing provisions of this act relative to descent and distribution of real and personal estate among the heirs and next of kin of intestates shall be construed to mean such persons only as may have been born in lawful wedlock.

SECTION 15 (a) The mother of an illegitimate child, her heirs and next of kin, the maternal grandfather and grandmother of said illegitimate child, and said illegitimate child, its heirs and next of kin, shall have capacity to take or inherit from each other personal estate as next of kin, and real estate as heirs, under the foregoing provisions of this act, in the same manner and to the same extent as if said child or children had been born in lawful wedlock.

(b) Every illegitimate child shall be considered as a brother or sister to every other child of its mother, legitimate or illegitimate.

(c) The intent of this section is to legitimate an illegitimate child only so far as is provided by clauses (a) and (b) hereof. This section is not intended to change the existing law with regard to the father of such a child, and his heirs and next of kin.

(d) In any and every case where the father and mother of an illegitimate child or children shall enter into the bonds of lawful wedlock, or shall heretofore have entered into the bonds of lawful wedlock, such child or children shall be legitimated for all purposes of inheritance by, from or through such child or children, under the provisions of this act, as if he or they had been born during the wedlock of his or their parents.

SECTION 16 (a) Any minor or adult person adopted according to law and the adopting parent or parents shall, respectively, inherit and take by devolution from and through each other personal estate as next of kin

and real estate as heirs, under the provisions of this act, as fully as if the person adopted had been born a lawful child of the adopting parent or parents.

(b) The person adopted shall, for all purposes of inheritance and taking by devolution, be a member of the family of the adopting parent or parents. The adoptive relatives of the person adopted shall be entitled to inherit and take from and through such person to the exclusion of his or her natural parents, grandparents and collateral relatives, but the surviving spouse of such adopted person and the children and descendants of such adopted person shall have all his, her and their respective rights under this act. Adopted persons shall not be entitled to inherit or take from or through their natural parents, grandparents or collateral relatives, but each adopted person shall have all his or her rights under this act in the estates of his or her spouse, children and descendants.

SECTION 17 (a) In default of known heirs or kindred, competent as aforesaid, the real estate of such intestate shall be vested in the surviving spouse of such intestate, if any, and the surviving spouse shall be entitled to the whole of the personal estate.

(b) If any person shall die, or has died intestate, leaving a surviving spouse and no known heirs or kindred, such surviving spouse, his or her heirs or legal representatives, may, at any time after the expiration of one year from the death of such intestate, and after final settlement of the administration accounts of such intestate, present a petition to the orphan's court of the county wherein any real estate of such intestate may lie, or, in the case of personal estate, to the orphan's court having jurisdiction of said administration accounts, setting forth that the said intestate died leaving no known heirs or kindred and seised or possessed of real or personal estate, which, by virtue of this act, vested in such surviving spouse. Such petition shall be verified by the oath or affirmation of the party petitioning, or of some other person knowing the facts.

Upon the presentation of said petition, the said court shall grant a citation to all the heirs or other persons interested or claiming any interest in said estate, to appear in said court at some time certain and show cause why a decree should not be made, ordering and directing, in the case of real estate, that the title thereto be adjudged to be in such surviving spouse, his or her heirs, or, in the case of personal estate, that the administrator or administrators of the estate of said intestate shall pay over to such surviving spouse, his or her legal representatives, the balance of such intestate's estate in his or their hands. Notice of such citation shall be published for such length of time and in such manner as the court in its discretion shall think proper.

If, upon the return of the citation and due proof of publication thereof, agreeably to the order of the court, no heirs or kindred claiming said estate shall appear, nor any good cause be shown to the contrary, the court shall order and decree as aforesaid, and, in the case of real estate, a certified copy of such decree shall be recorded in the office of the recorder of deeds of the county where said real estate shall lie, in the deed book, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name of the surviving spouse, and shall be registered in the survey bureau, or with the proper authorities empowered to keep a register of real estate, if any there be, in said county. The charges for recording and registering shall be the same as are provided by law for similar services. The record of such decree shall be deemed and held to be prima facie proof of the facts therein set forth with like force and effect as the record of a deed; and if, upon the return of any such citation, any person or persons shall appear in court claiming to be heirs or kindred of such intestate, whose rights to the said estate shall be disputed by such surviving spouse, his or her heirs or legal representatives, then the court

may direct an issue to determine the matter, or may make such order therein as they shall think proper.

In all cases the decree of such court entered upon the failure of any heirs or kindred to appear, or after the trial of such an issue, or otherwise, shall not be subject to be reopened by said court after the expiration of six months from the date of its entry, except as hereinafter provided. Any such cause may be removed by appeal to the supreme court or superior court, in the same manner as appeals are now taken by law in cases determined in the orphans' court or tried by jury upon issues directed by that court. Where the record in such cause is thus removed to an appellate court, the six months' period within which the decree is subject to be reopened by the orphans' court shall cease to run until the return of the record from the appellate court.

SECTION 18. The real estate of such intestate shall be vested in the person or persons entitled thereto under the provisions of this act for such estate as the intestate had therein, and such person or persons shall be entitled to the personal estate absolutely.

SECTION 19. Wherever real or personal estate shall descend to or be distributed among several persons, whether lineal or collateral heirs or kindred, standing in the same degree of consanguinity to the intestate, if there shall be only one of such degree, he shall take the whole of such estate, and if there shall be more than one, they shall take in equal shares, and if real estate, shall hold the same as tenants in common.

SECTION 20. Descendants and relatives of an intestate, begotten before the death of the intestate and born thereafter, shall in all cases inherit and take in like manner as if they had been born in the lifetime of such intestate.

SECTION 21. All relatives and persons concerned in the estate of any intestate who shall not lay legal claim to their respective shares of the personal estate within seven years of the decease of the intestate, shall be de-

barred from the same forever: *Provided*, That if any such relative or person shall, at the time of the decease of the intestate, be within the age of twenty-one years, he or she shall be entitled to receive and recover the same, if he or she shall lay legal claim thereto within seven years after coming to full age.

SECTION 22. If any person, other than a surviving spouse, entitled under the provisions of this act to inherit or take real or personal property from such intestate, shall have any estate by settlement of such intestate, or shall have been advanced by him in his lifetime, either in real or personal estate, the amount of such settlement or advancement shall be charged against the share of the person who shall have received it, so that the total amount received by him, including the amount of such settlement or advancement, shall not exceed the amount received by each of the other persons who are equally entitled under the provisions of this act to inherit or take from said intestate.

SECTION 23. No person who shall be finally adjudged guilty, either as principal or accessory, of murder of the first or second degree, shall be entitled to inherit or take any part of the real or personal estate of the person killed, as surviving spouse, heir or next of kin to such person under the provisions of this act.

SECTION 24. In default of all such known heirs or kindred, or surviving spouse, competent to take as aforesaid, the real and personal estate of such intestate shall go to and be vested in the commonwealth by escheat.

SECTION 25. Nothing in this act contained, relative to a distribution of personal estate among kindred, shall be construed to extend to the personal estate of an intestate whose domicile, at the time of his death, was out of this commonwealth.

SECTION 26. This act shall be known and may be cited as the Intestate Act of 1917.

SECTION 27. This act shall take effect on the thirty-first day of December, nineteen hundred and seventeen, and shall apply to the estates, real and personal, of all persons dying intestate on or after said day. As to the estates, real and personal, of all persons dying before that day, the existing laws shall remain in full force and effect.

SECTION 28. This Act of Assembly is intended as an entire and complete system for the descent and distribution of the estates, real and personal, of persons dying intestate. The following acts and parts of acts of assembly are hereby repealed as respectively indicated, but so far only as relates to the estates, real and personal, of any person or persons dying intestate on or after the thirty-first day of December, nineteen hundred and seventeen. The repeal of the first section of an act shall not repeal the enacting clause.

Sections 3 to 13 inclusive and 18 of an act entitled "An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned," passed April 19, 1794, 3 Sm. L. 143, absolutely.

Sections 5, 6 and 7 of an act entitled "An Act supplementary to the act, entitled 'An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned' " passed April 4, 1797, 3 Sm. L. 296, absolutely.

An act entitled "An Act for the settlement of the estates of intestates, where some of the heirs reside out of the state," approved March 13, 1815, P. L. 173, absolutely.

An act entitled "An Act relative to escheated estates," approved January 21, 1819, P. L. 25, absolutely.

An act entitled "A supplement to an act entitled 'An Act relative to escheated estates,' passed the twenty-first of January, eighteen hundred and nineteen," approved April 6, 1833, P. L. 207, absolutely.

An act entitled "An Act relating to the descent and distribution of the estates of intestates," approved April 8, 1833, P. L. 315, absolutely.

Section 9 of an act entitled, "A supplement to an act, entitled 'An Act relative to the LeRaysville Phalanx,' passed March, Anno Domini one thousand eight hundred and forty-seven, and relative to obligors and obligees, to secure the right of married women, in relation to defalcation, and to extend the boundaries of the borough of Ligonier," approved April 11, 1848, P. L. 536, in so far as it relates to the distribution of the personal estate of a deceased married woman, and section 10 of said act, absolutely.

Section 2 of an act entitled "An Act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate," approved April 27, 1855, P. L. 368, absolutely, and section 3 of said act in so far as it relates to inheritance.

Section 5 and the proviso to Section 7 of an act entitled "An Act relating to certain duties and rights of husband and wife, and parents and children," approved May 4, 1855, P. L. 430, absolutely.

An act entitled "An Act to legitimate children born out of lawful wedlock," approved May 14, 1857, P. L. 507, in so far as it relates to inheritance.

An act entitled "An Act permitting illegitimates to inherit from each other in certain cases," approved June 5, 1883, P. L. 88, absolutely.

An act entitled "An act to facilitate the proof and record of the title of real estate vested in the heirs of certain intestates," approved June 20, 1883, P. L. 131, absolutely.

An act entitled "An Act providing for the manner in which estates of intestates shall be distributed, where the distributees stand in the same degree of consanguinity to the intestate," approved June 30, 1885, P. L. 251, absolutely.

An act entitled "An Act relating to the mode of inheriting from, through, or by, a child or children adopted according to law, and being a supplement to an act, entitled 'An Act relating to certain duties of husband and wife, and parents and children,' approved the fourth day of May, one thousand eight hundred and fifty-five," approved April 13, 1887, P. L. 53, absolutely.

The proviso to Section 1 of an act entitled "An Act amending section seventh of an act, entitled 'An Act relating to certain duties and rights of husband and wife, and parents and children,' approved the fourth day of May, Anno Domini one thousand eight hundred and fifty-five, providing that married men or women, in case of drunkenness or profligacy of husbands or wives, may consent to the adoption of their children," approved May 19, 1887, P. L. 125, absolutely.

An act entitled "An Act relating to estates of intestates, providing that children and descendants of deceased grand-parents shall represent such deceased grand-parents whenever grand-parents are entitled as next of kin to intestates," approved May 25, 1887, P. L. 261, absolutely.

The first proviso to Section 1 of an act entitled "An Act relating to the adoption of any person as an heir," approved May 9, 1889, P. L. 168, absolutely.

An act entitled "An Act to amend the third section of the act, entitled 'An Act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate' approved the twenty-seventh day of April, Anno Domini one thousand eight hundred and fifty-five, providing that illegitimate children shall take their mother's name, and she and her mother, and they and their issue, shall be capable to take or inherit from each other," approved June 14, 1897, P. L. 142, in so far as it relates to inheritance.

An act entitled "An Act to allow legitimate and illegitimate children, born from the same mother, dying

without children, to inherit real and personal property from each other, in exclusion to the grandmother of the illegitimate child or children, as though they had been born in lawful wedlock," approved June 10, 1901, P. L. 551, absolutely.

Sections 2, 3 and 4 of an act entitled "An Act to regulate and define the legal relations of an illegitimate child, or children, its or their heirs, with each other and the mother and her heirs," approved July 10, 1901, P. L. 639, absolutely.

An act entitled "An Act to amend an act, entitled 'An Act to regulate and define the legal relations of an illegitimate child or children, its or their heirs with each other and the mother and her heirs,' approved the tenth day of July, Anno Domini one thousand nine hundred and one; and applying and extending it to all cases, now pending, where the estate of such illegitimate or mother has not been actually paid to and received by collateral heirs or the Commonwealth," approved March 26, 1903, P. L. 70, absolutely.

The proviso to Section 1 of an act entitled "An Act to amend an act, entitled 'An act amending section seventh of an act, entitled "An act relating to certain duties and rights of husband and wife and parents and children," approved the fourth day of May, Anno Domini one thousand eight hundred and fifty-five, providing that married men or women, in case of drunkenness or profligacy of husbands or wives, may consent to the adoption of their children,' " approved April 22, 1905, P. L. 297, absolutely.

An act entitled "An Act to amend section one of an act, entitled 'An Act relating to the descent and distribution of the estates of intestates,' passed and approved April eighth, one thousand eight hundred and thirty-three, defining and declaring the interest that shall descend to and vest in the surviving husband or of such intestate," approved April 1, 1909, P. L. 87, absolutely.

Sections 3 and 4 of an act entitled "An Act relating to the adoption of adult persons as heirs," approved June 1, 1911, P. L. 539, in so far as they relate to inheritance and devolution under the intestate laws.

An act entitled "A supplement to an act, entitled 'An Act to amend section one of an act, entitled "An Act relating to the descent and distribution of the estates of intestates," passed and approved April eighth, one thousand eight hundred and thirty-three, defining and declaring the interest that shall descend to and vest in the surviving husband or wife of such intestate,' approved April first, Anno Domini one thousand nine hundred and nine," approved July 21, 1913, P. L. 872, absolutely.

An act entitled "An Act amending article two of section one of an act, entitled 'An Act relating to the descent and distribution of the estates of intestates,' approved the eighth day of April, one thousand eight hundred thirty-three, as amended, by further regulating the appointment and number of appraisers," approved July 21, 1913, P. L. 875, absolutely.

An act entitled "An Act to amend an act, approved the fourth day of May, one thousand eight hundred and fifty-five, entitled 'An Act relating to certain duties and rights of husband and wife and parents and children,' " approved May 3, 1915, P. L. 234, absolutely.

An act entitled "An Act amending section one of an act, entitled 'An Act amending section seven of an act, entitled "An act relating to certain duties and rights of husband and wife, and parents and children," approved the fourth day of May, Anno Domini one thousand eight hundred and fifty-five; providing that married men or women, in case of drunkenness or profligacy of husbands or wives, may consent to the adoption of their children,' approved the nineteenth day of May, Anno Domini one thousand eight hundred and eighty-seven," approved May 28, 1915, P. L.

580, in so far as it relates to inheritance and devolution under the intestate laws.

All other acts of assembly, or parts thereof, that are in any way in conflict or inconsistent with this Act or any part thereof, are hereby repealed, so far as relates to the estates, real and personal, of any person or persons dying intestate on or after the thirty-first day of December, 1917.

WILLS ACT.

AN ACT.

Relating to the form, execution, revocation and interpretation of wills, to nuncupative wills, to the appointment of testamentary guardians, to spendthrift trusts, to forfeiture of devise or legacy in case of murder of testator, to elections to take under or against wills, and to the recording and registering of such elections and of decrees relative thereto and to the fees therefor.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That every person of sound mind and of the age of twenty-one years or upwards, whether married or single, may dispose by will of his or her real estate, whether such estate is held in fee simple or for the life or lives of any other person or persons, and whether in severalty, joint tenancy or common, and also of his or her personal estate.

SECTION 2. Every will shall be in writing, and unless the person making the same shall be prevented by the extremity of his last sickness, shall be signed by him at the end thereof, or by some person in his presence, and by his express direction; and in all cases, shall be proved by the oaths or affirmations of two or more competent witnesses, otherwise such will shall be of no effect: *Provided*, That the presence of dispositive or testamentary words or directions, or the appointment of an executor or the like, after the signature to a will, whether written before or after the execution thereof, shall not invalidate that which precedes the signature.

SECTION 3. If the testator be unable to sign his name, for any reason other than the extremity of his last sickness, a will to which his name is subscribed in his presence, by his direction and authority, and to which he makes his mark or cross, unless unable so to do, in which case the mark or cross shall not be required, shall be as valid as though he had signed his name thereto: *Provided*, That such will shall be proved by the oaths or affirmations of two or more competent witnesses.

SECTION 4. Personal estate may be bequeathed by a nuncupative will, under the following restrictions:

(a) Such will shall in all cases be made during the last sickness of the testator, and in the house of his habitation or dwelling, or where he has resided for the space of ten days or more, next before the making of such will; except where such person shall be surprised by sickness, being from his own house.

(b) Where the sum or value bequeathed shall exceed one hundred dollars, it shall be proved that the testator, at the time of pronouncing the bequest, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect; and in all cases, the foregoing requisites shall be proved by two or more witnesses, who were present at the making of such will.

(c) No testimony shall be received to prove any nuncupative will after six months elapsed from the speaking of the alleged testamentary words, unless the said testimony, or the substance thereof, were committed to writing within six days after the making of said will.

SECTION 5. Notwithstanding this act, any mariner being at sea, or any soldier being in actual military service, may dispose of his movables, wages and personal estate, as he might have done before the making of this act.

SECTION 6. No estate, real or personal, shall be bequeathed or devised to any body politic, or to any per-

son in trust, for religious or charitable uses, except the same be done by will attested by two credible, and, at the time, disinterested witnesses, at least thirty days before the decease of the testator; and all dispositions of property contrary hereto shall be void, and go to the residuary legatee or devisee, heirs or next of kin, according to law. A disinterested witness, within the meaning of this section, is a witness not interested in such religious or charitable use, this section not being intended to apply to a witness interested in some other devise or bequest in the same instrument.

SECTION 7. The emblements or crops growing on lands held by a widow in dower, or by any other tenant for life, may be disposed of by will as other personal estate. Rents and other periodical payments accruing to any tenant for life, or to any other person entitled under the laws of this commonwealth regulating the descent and partition of real estate, may, so far as the same may have accrued on the day of death of such tenant for life, or other person, be disposed of by will, in like manner.

SECTION 8 (a) Every person competent to make a will, being the father or adopting father of any minor child unmarried, may appoint a testamentary guardian for such child during his or her minority, or for any shorter period: *Provided*, That such testamentary guardian shall not be entitled to the custody of the person of such child unless the mother or adopting mother, if surviving, shall relinquish such custody, or unless the best interests of the child shall require that such surviving mother or adopting mother should not retain the custody of the person of such child.

(b) Every person competent to make a will, being the mother or adopting mother of any minor child unmarried, may appoint a testamentary guardian for such child during his or her minority, or for any shorter period, whenever the father or adopting father of such child shall be deceased and has not appointed such a guardian. Such mother or adopting mother,

who shall leave to such child an estate, either real or personal, may appoint a testamentary guardian for such estate of the child, whether the father or adopting father of such child shall be living or dead, and whether he shall or shall not have appointed a testamentary guardian for such child.

(c) No father who shall have, for one year or upwards previous to his death, wilfully neglected or refused to provide for his child or children, and no mother who shall have, for a like period, deserted her child or children or failed to perform her parental duties, shall have the right to appoint any testamentary guardian for such child or children.

SECTION 9. Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

SECTION 10. The real estate acquired by a testator after making his will shall pass by a general devise, unless a contrary intention be manifest on the face of the will.

SECTION 11. A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. In like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall

operate as an execution of such power, unless a contrary intention shall appear by the will.

SECTION 12. All devises of real estate shall pass the whole estate of the testator in the premises devised, although there be no words of inheritance or of perpetuity, unless it appear by a devise over, or by words of limitation, or otherwise, in the will, that the testator intended to devise a less estate.

SECTION 13. Whenever by any devise an estate in fee tail would be created according to the common law of this State, such devise shall be taken and construed to pass an estate in fee simple, and as such shall be inheritable and freely alienable.

SECTION 14. In any devise or bequest of real or personal estate, the words, "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will in which such devise or bequest is made.

SECTION 15 (a) No devise or legacy in favor of a child or children, or other lineal descendant or descendants of any testator, whether such children or descendants be designated by name or as a class, shall lapse or become void by reason of the decease of such legatee or devisee in the lifetime of the testator, if such devisee or legatee shall leave issue surviving the testator; but such devise or legacy shall be good and available in favor of such surviving issue, with like effect as if such devisee or legatee had survived the testator, unless the testator shall in the will direct otherwise.

(b) Where any testator shall not leave any lineal descendants who would receive the benefit of any lapsed or void devise or legacy, no devise or legacy

made in favor of a brother or sister, or of brothers or sisters of such testator, or in favor of the children of a brother or sister of such testator, whether such brothers or sisters or children of brothers or sisters be designated by name or as a class, shall be deemed or held to lapse, or become void by reason of the decease of such devisee or legatee in the lifetime of the testator, if such devisee or legatee shall leave issue surviving the testator; but such devise or legacy shall be good and available in favor of such surviving issue, with like effect as if such devisee or legatee had survived the testator, unless the testator shall in the will direct otherwise.

(c) Unless a contrary intention shall appear by the will, such real or personal estate or interests therein as shall be comprised or intended to be comprised in any devise or bequest in such will contained, which shall fail or be void by reason of the death of the devisee or legatee in the lifetime of the testator, or by reason of such devise or bequest being contrary to law or otherwise incapable of taking effect, or which shall be revoked by the testator, shall be included in the residuary devise or bequest, if any, contained in such will. In any case where such devise or bequest, which shall fail or be void or shall be revoked as aforesaid, shall be contained in the residuary clause of such will, it shall pass to and be divided among the other residuary devisees or legatees, if any there be, in proportion to their respective interests in such residue.

SECTION 16 (a) Whenever in any will a bequest or devise shall be made to the child or children of the testator, without naming such child or children, such bequest or devise shall be construed to include any adopted child or children of the testator, unless a contrary intention shall appear by the will.

(b) Whenever in any will a bequest or devise shall be made to the child or children of any person other than the testator, without naming such child or children, such bequest or devise shall be construed to in-

clude any adopted child or children of such other person who were adopted before the date of the will, unless a contrary intention shall appear by the will.

SECTION 17. All pecuniary legacies contained in any will shall be charged upon and payable out of any real estate not specifically devised, where the personal estate is insufficient for their payment, or where the personal estate though originally sufficient has been wasted or misapplied by the executor, unless a contrary intention shall appear by the will.

SECTION 18. Unless the testator shall otherwise direct by his will, the devisee of real estate, which is subject to mortgage, shall take subject thereto and shall not be entitled to exoneration out of the other estate of the testator, real or personal, and this whether the mortgage was created by the testator or by a previous owner or owners, and notwithstanding any general direction by the testator that his debts be paid.

SECTION 19. All income whatsoever, devised or bequeathed by any will so as to be free from liability for the debts, contracts or engagements of the beneficiary, or so as not to be subject to execution, attachment sur judgment, sequestration or other process, shall notwithstanding such testamentary provisions be subject to and liable for the support and maintenance of the wife and minor children of the beneficiary and for the value of necessities furnished to them or any of them, where said beneficiary has refused or neglected to provide suitably for them, and all of the income of said beneficiary shall be subject to all legal process issued by any court of this Commonwealth having jurisdiction in the premises in order to enforce such liability of said beneficiary.

SECTION 20 (a) No will in writing concerning any real estate shall be repealed nor shall any devise or directions therein be altered otherwise than by some other will or codicil in writing, or other writing declaring the same, executed and proved in the manner

hereinbefore provided, or by burning, cancelling, obliterating or destroying the same by the testator himself, or by someone in his presence, and by his express direction.

(b) No will in writing concerning any personal estate shall be repealed, nor shall any bequest or direction therein be altered, otherwise than as hereinbefore provided in the case of real estate, except by a nuncupative will, made under the circumstances set forth in Section four of this Act, and also committed to writing in the lifetime of the testator, and after the writing thereof, read to or by him, and allowed by him, and proved to be so done by two or more witnesses.

SECTION 21. When any person, male or female, shall make a last will and testament and afterward shall marry or shall have a child or children not provided for in such will, and shall die, leaving a surviving spouse and such child or children, or either a surviving spouse or such child or children, although such child or children be born after the death of their father, every such person, so far as shall regard the surviving spouse, or child or children born after the making of the will, shall be deemed and construed to die intestate; and such surviving spouse, child or children, shall be entitled to such purparts, shares and dividends of the estate, real and personal, of the deceased, as if such person had actually died without any will.

SECTION 22. No person who shall be finally adjudged guilty, either as principal or accessory, of murder of the first or second degree, shall be entitled to take any part of the real or personal estate of the person killed, as devisee or legatee or otherwise under the will of such person.

SECTION 23 (a) When any person shall die testate leaving a surviving spouse, who shall elect to take against the will, such surviving spouse shall be entitled to such interests in the real and personal estate of the deceased spouse as he or she would have been entitled to had the testator died intestate: *Provided, That*

nothing herein contained shall affect the right or power of a married woman, by virtue of any authority or appointment contained in any deed or will, to bequeath or devise any property held in trust for her sole and separate use.

(b) A surviving spouse electing to take under or against the will of the decedent shall, in all cases, manifest the election by a writing signed by him or her, duly acknowledged before an officer authorized by law to take the acknowledgement of deeds, and delivered to the executor or administrator of the estate of such decedent, within two years after the issuance of letters testamentary or of administration. Neglect or refusal or failure to deliver such writing within said period shall be deemed an election to take under the will.

(c) No payment from the estate of such decedent, except the exemption allowed by law to the widow, shall be required to be made to any surviving spouse unless his or her election shall have been first duly executed, acknowledged and delivered, as provided in clause (b) of this section.

(d) The orphans' court, on the application of any person interested in the estate of a decedent, may issue a citation, at any time after six months from the death of the testator, to the surviving spouse of the testator, to appear at a certain time not less than one month thereafter, in the said court, to make his or her election to take under or against the will, which election shall be filed of record, and shall be conclusive. If the surviving spouse shall neglect or refuse to appear on such citation, then upon due proof being made to the court of the service thereof, the said neglect or refusal shall be deemed an election to take under the will, and the decree of the court to that effect shall be conclusive.

(e) The election by a surviving spouse, or a certified copy of the final decree of any orphans' court, in cases where there shall have been an election in accordance with clause (d) hereof, or a neglect or refusal to

elect within the time prescribed by the order of the said court, shall, at the cost of the estate, be recorded by the personal representative of the decedent, in the office for the recording of deeds of the county where the decedent's will is probated, in the deed book, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name of the surviving spouse, and shall be registered in the survey bureau, or with the proper authorities empowered to keep a register of real estate, if any there be, in said county. The charges for recording and registering shall be the same as are provided by law for similar services. The election, or decree of the court, or a certified copy of either, may also be recorded in any office for the recording of deeds within this commonwealth, with the same effect as if a duly signed and acknowledged declaration to the effect stated therein had been made by the person authorized to elect, and at his or her request recorded in said office according to law. After the said election shall have been recorded in the office for the recording of deeds as aforesaid, the said election, at the cost of the estate, shall be filed in the office of the clerk of the orphans' court and a record made of such filing by the said clerk.

SECTION 24. Nothing in this act contained shall be construed to apply to the disposition of personal estate by a testator whose domicile, at the time of his death, was out of this commonwealth.

SECTION 25. This act shall be known and may be cited as the Wills Act of 1917.

SECTION 26. This act shall take effect on the thirty-first day of December, 1917, and shall apply to the wills of all persons dying on or after said day. As to the wills of all persons dying before that day, the existing laws shall remain in full force and effect.

SECTION 27. The following acts and parts of acts of assembly are hereby repealed as respectively indicated, but so far only as relates to the estates, real and per-

sonal, of any person or persons dying on or after the thirty-first day of December, 1917. The repeal of the first section of an act shall not repeal the enacting clause.

Sections 3, 4, 6 and 7 of an act entitled "An Act concerning the probates of written and nuncupative wills, and for confirming devises of lands," passed in 1705, 1 Sm. L. 33, absolutely.

Section 23 of an act entitled "An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned," passed April 19, 1794, 3 Sm. L. 143, absolutely.

Section 10 of an act entitled "An Act supplementary to the act, entitled 'An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned,'" passed April 4, 1797, 3 Sm. L. 296, absolutely.

Section 11 of an act entitled "An Act supplementary to the several acts of this commonwealth concerning partitions, and for other purposes therein mentioned," approved April 7, 1807, P. L. 155, absolutely.

An act entitled "An Act to prevent devises and legacies from lapsing in certain cases," approved March 19, 1810, P. L. 96, absolutely.

Section 1 of an act entitled "An Act relative to dower, and for other purposes," approved April 1, 1811, P. L. 198, absolutely.

Section 11 of an act entitled "An act relating to registers and registers' courts," approved March 15, 1832, P. L. 135, absolutely.

Section 35 of an act entitled "An act relating to orphans' courts," approved March 29, 1832, P. L. 190, absolutely.

An act entitled "An act relating to last wills and testaments," approved April 8, 1833, P. L. 249, absolutely.

Section 2 of an act entitled “An act further to regulate proceedings in courts of justice, and for other purposes,” approved May 6, 1844, P. L. 564, absolutely.

An act entitled “A supplement to an act relating to last wills and testaments, passed the eighth day of April, eighteen hundred and thirty-three,” approved January 27, 1848, P. L. 16, absolutely.

Section 7 and 11 of an act entitled “A supplement to an act, entitled ‘An act relative to the LeRaysville Phalanx,’ passed March, Anno Domini one thousand eight hundred and forty-seven, and relative to obligors and obligees, to secure the right of married women, in relation to defalcation, and to extend the boundaries of the borough of Ligonier,” approved April 11, 1848, P. L. 536, absolutely.

Section 11 of an act entitled “An act relating to corporations and to estates held for corporate, religious and charitable uses,” approved April 26, 1855, P. L. 328, in so far as it relates to estates, real or personal, bequeathed or devised.

Section 1 of an act entitled “An Act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate,” approved April 27, 1855, P. L. 368, in so far as it relates to devises.

Sections 1 and 6 of an act entitled “An act relating to certain duties and rights of husband and wife, and parents and children,” approved May 4, 1855, P. L. 430, absolutely.

Section 1 of an act entitled “An act relating to dowers,” approved April 20, 1869, P. L. 77, absolutely.

An act entitled “A supplement to an act relating to last wills and testaments, approved the eighth day of April, one thousand eight hundred and thirty-three, providing for the time from which wills shall speak and take effect, for the vesting of lapsed or void devises of real estate in the residuary devisee, and for the execution of powers over real and personal estate

by the person in whom such powers are vested," approved June 4, 1879, P. L. 88, absolutely.

An act entitled "An act to enable mothers in certain cases to appoint testamentary guardians," approved June 10, 1881, P. L. 96, absolutely.

An act entitled "An act to enable mothers, in certain cases, to appoint testamentary guardians, being a supplement to an act, bearing the same title, approved June tenth, one thousand eight hundred and eighty-one, and also a supplement to an act, entitled 'An act relating to certain duties and rights of husband and wife, and parents and children,' approved May fourth, one thousand eight hundred and fifty-five," approved May 25, 1887, P. L. 264, absolutely.

Section 5 of an act entitled "An act relating to husband and wife, enlarging her capacity to acquire and dispose of property, to sue and be used, and to make a last will, and enabling them to sue and to testify against each other in certain cases," approved June 8, 1893, P. L. 344, absolutely.

An act entitled "An act declaring the construction of words in a deed, will or other instrument importing a failure of issue," approved July 9, 1897, P. L. 213, in so far as it relates to devises or bequests of real or personal estate.

An act entitled "An act to amend section two of an act, entitled 'An act further to regulate proceedings in courts of justice, and for other purposes,' approved the sixth day of May, Anno Domini one thousand eight hundred and forty-four, relating to devises and legacies to brothers or sisters, or the children of brothers or sisters of any testator, and preventing the lapse thereof in the case of the death of such devisee or legatee during the lifetime of the testator," approved July 12, 1897, P. L. 256, absolutely.

An act entitled "An act relating to elections by surviving husbands or wives to take under or against the wills of decedents; to the recording thereof, and of final decrees, where parties have failed or refused to

elect when required so to do; and forbidding payments to such parties until they have made and filed their election," approved April 21, 1911, P. L. 79, absolutely.

An act entitled "An act to amend section eleven of an act, entitled 'An act relating to corporations and to estates held for corporate, religious, and charitable uses,' approved the twenty-sixth day of April, one thousand eight hundred and fifty-five," approved June 7, 1911, P. L. 702, in so far as it relates to estates, real or personal, bequeathed or devised.

An act entitled "An act to amend an act approved the eighth day of April, one thousand eight hundred thirty-three, entitled 'An act relating to last wills and testaments,' by conferring the same rights upon the mother as upon the father," approved April 15, 1915, P. L. 124, absolutely.

An act entitled "An act to amend an act, approved the tenth day of June, one thousand eight hundred eighty-one, entitled 'An act to enable mothers in certain cases to appoint testamentary guardians,' by extending certain rights to mothers," approved April 21, 1915, P. L. 145, absolutely.

All other acts of assembly, or parts thereof, that are in any way in conflict or inconsistent with this act, or any part thereof, are hereby repealed, so far as relates to the estates, real and personal, of any person or persons dying on or after the thirty-first day of December, 1917.

WE take pleasure in presenting to you copies of the Acts of Assembly, Approved on June 7, 1917, and entitled Intestate Act, Wills Act, Fiduciaries Act, Partition Act, Revised Price Act, Register of Wills Act, Orphans' Court Act, which were prepared by Hon. John Marshall Gest of the Orphans' Court of Philadelphia County, Hon. Thomas J. Baldridge, President Judge of Blair County, and Hon. George E. Alter of the Allegheny County Bar, the Commissioners appointed by the Governor on October 4th, 1915, in accordance with the Act of April 23rd, 1915, P. L. 177; and also certain Preliminary Notes to the said several Acts, which are taken from the Report of the said Commissioners to the Legislature of 1917.

These Acts of Assembly make many fundamental changes in the Laws of this State, affecting Decedents' Estates and as they will not be actually published by the State for some time, we have thought them of sufficient general interest to justify their publication in pamphlet form at once.

THE COLONIAL TRUST COMPANY
PITTSBURGH

Capital \$2,600,000.00

Surplus and Undivided Profits \$3,500,000.00

Trust Estates \$10,000,000.00

FIDUCIARIES ACT.

AN ACT

Relating to the administration and distribution of the estates of decedents and of minors, and of trust estates; including the appointment, bonds, rights, powers, duties, liabilities, accounts, discharge and removal of executors, administrators, guardians and trustees, herein designated as fiduciaries; the administration and distribution of the estates of presumed decedents; widow's and children's exemptions; debts of decedents, rents of real estate as assets for payment thereof, the lien thereof, sales and mortgages of real estate for the payment thereof, judgments and executions therefor and the discharge of real estate from the lien thereof; contracts of decedents for the sale or purchase of real estate; legacies, including legacies charged on land; the discharge of residuary estates and of real estate from the lien of legacies and other charges; the appraisement of real estate devised at a valuation; the ascertainment of the curtilage of dwelling houses or other buildings devised; the abatement and survival of actions and the substitution of executors and administrators therein, and suits against fiduciaries; investments by fiduciaries; the organization of corporations to carry on the business of decedents; the audit and review of accounts of fiduciaries; refunding bonds; transcripts to the court of common pleas of balances due by fiduciaries; the rights, powers and liabilities of non-resident and foreign fiduciaries; the appointment, bonds, rights, powers, duties and liabilities of trustees durante absentia;

the recording and registration of decrees, reports and other proceedings, and the fees therefor; appeals in certain cases; and also generally dealing with the jurisdiction, powers and procedure of the orphans' court in all matters relating to fiduciaries concerned with the estates of decedents.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That as used in this act, the term "fiduciary" shall include executors, administrators, guardians and trustees, whether domiciliary or ancillary, subject to the jurisdiction of the orphans' court of any county of this Commonwealth.

SECTION 2. (a) Letters testamentary and of administration shall be grantable only by the register of wills of the county within which was the family or principal residence of the decedent, at the time of his decease; and if the decedent had no such residence in this Commonwealth, then ancillary letters testamentary or of administration shall be grantable only by the register of the county where the principal part of the goods and estate of such decedent within this Commonwealth shall be.

(b) No letters testamentary or of administration shall in any case be originally granted upon the estate of any decedent, after the expiration of twenty-one years from the day of his decease, except on the order of the orphans' court, upon due cause shown.

(c) Whenever letters of administration are by law necessary, the register having jurisdiction shall grant them in such form as the case shall require, to the widow, if any, of the decedent, or to such of his relations or kindred as by law may be entitled to the residue of his personal estate, or to a share or shares therein, after payment of his debts; or he may join with the widow in the administration, such relations or kindred, or such one or more of them, as he shall judge

will best administer the estate, preferring always, of those so entitled, such as are in the nearest degree of consanguinity with the decedent, and also preferring males to females; and in case of the refusal or incompetency of every such person, to one or more of the principal creditors of the decedent applying therefor, or to any fit person at his discretion: *Provided*, That if such decedent was a married woman, her husband shall be entitled to the administration, in preference to all other persons: and *provided further*, That in all cases of an administration with a will annexed; where there is a general residue of the estate bequeathed, the right to administer shall belong to those having the right to such residue, and the administration in such case shall be granted, by the register, to such one or more of them as he shall judge will best administer the estate.

(d) Every application to any register of wills for the issuance of letters testamentary or of administration shall be in the form of a petition, duly verified by affidavit, setting forth the residence and citizenship and the place, day and hour of death of the decedent, the estimated value of his property, real and personal, the location of his real property, and, in the case of an intestacy, the names and residences of the surviving spouse, if any, and of the next of kin of the intestate, together with an averment that the persons named are the surviving spouse and all the next of kin of the intestate.

SECTION 3 (a) Whenever the executors named in any last will and testament shall all refuse or renounce the trust and execution thereof, the register having jurisdiction as aforesaid may receive the probate of such will, and grant letters of administration with it annexed, to the persons by law entitled thereto.

(b) Whenever a sole executor, or the survivor of several executors, shall die, leaving goods or estate of his testator unadministered, the register having jurisdiction shall, notwithstanding such executor may have

made his last will and testament, and appointed an executor or executors thereof, grant letters of administration of all such goods and estate, in the same manner as if such executor had died without having made any testament or last will; and the executor of such deceased executor shall in no case be deemed executor of the first testator.

(c) In all cases where the administration of the estate of any decedent shall become vacant, by reason of death or of any decree of the orphans' court, or from any other cause, the register having jurisdiction shall, on proper proof being made of the fact, grant new letters, in such form as the case shall require, to the person or persons by law entitled thereto.

(d) All and singular the powers, duties and liabilities of executors are hereby extended to administrators with a will annexed.

(e) Administrators de bonis non, with or without a will annexed, shall have power to demand and recover from their predecessors in the administration, or their legal representatives, all moneys, goods and assets remaining in their hands due and belonging to the estate of the decedent, and to commence and prosecute actions upon promises made to such predecessors in their representative character, and to take and defend appeals and sue forth and defend writs of scire facias and writs of execution upon judgments, obtained by or in the name of the executors or administrators into whose place they may have come, and also to proceed with and perfect all unexecuted executions, which may have been issued thereon at the instance of such predecessors: *Provided*, That when any suit shall have been brought by an administrator de bonis non for the recovery of moneys, goods or assets, remaining in the hands of his predecessors, or their legal representatives, before they shall have settled their final administration account, the court in which such action shall be brought shall have power to stay the proceedings therein, on the defendants' filing such an account in

the register's office of the proper county within a reasonable time to be fixed by said court, until said account shall have been finally settled and confirmed; and on the production of a certified copy of said account, so settled and confirmed, the court in which such suit shall be pending is hereby authorized and required to render judgment for the balance which shall thereby appear to be due to either party.

SECTION 4. The register of wills having jurisdiction may, when the circumstances of the case require, grant to any fit person or persons letters of administration *durante minoritate*, *durante absentia*, or *pendente lite*, security to be entered as in other cases of administration.

SECTION 5. All such acts of administration as would be in due course of law, in case of intestacy, if done in good faith and without notice of a will, and all such acts of any executor as would be in due course of law, if the will under which letters testamentary were issued were the last will of the testator, and if done in good faith and without notice of a later will, shall not be impeached, though a will, or a later will, should afterward be discovered and established.

SECTION 6 (a) Whenever, hereafter, any person shall be presumed to be dead, on account of absence for seven or more years from the place of his or her last domicile, whether the same be within this Commonwealth, or in any other state, territory or possession of the United States, or in any foreign country, any person entitled under the last will and testament of such presumed decedent or under the intestate laws to any share in his or her estate within this commonwealth, or the escheator for the Commonwealth, may present a petition to the orphans' court of the county of such person's last residence or, where the presumed decedent was a non-resident of this Commonwealth, in the orphans' court of the county where the greater part of his property within this Commonwealth may be situated, setting forth the facts which raise the presump-

tion of death. The said court, if satisfied as to the person who would be entitled to letters testamentary or of administration were the presumed decedent in fact dead, shall cause to be advertised, in a newspaper published in said county, once a week for four successive weeks, together with such other advertisement as the court, according to the circumstances of the case, shall deem expedient or advisable, the fact of such application, together with notice that on a day certain, which shall be at least two weeks after the last appearance of said advertisement, the court, or master appointed by the court for that purpose, will hear evidence concerning the alleged absence of the presumed decedent, and the circumstances and duration thereof.

(b) Whenever, hereafter, letters of administration or letters testamentary shall have been granted in any other State, territory or possession of the United States, or in any foreign country, on the estate of a resident thereof, presumed to be dead, on account of absence for seven or more years from the place of his last domicile, it shall be lawful for the person or persons, or trust company, to whom such letters have been granted, to present a petition to the orphans' court of the county within this Commonwealth in which all, or the greater portion, of the estate of said presumed decedent may be found, accompanied by a complete exemplification of the record of the grant of such letters, praying for the grant of ancillary letters testamentary or of administration upon the estate of such presumed decedent, situate, owing or belonging to him within this Commonwealth. The said court, if satisfied that the person or trust company proposed in such petition would be a fit person or company to whom such letters might be issued, shall cause publication to be made, in the manner and for the period as provided in clause (a) of this section, of the fact of such application, together with notice that on a day certain, which shall be at least two weeks after the last appearance of said advertisement, the court, or a master appointed for the

purpose, will hear evidence concerning the alleged absence of the presumed decedent, and the circumstances and duration thereof.

(c) At the hearing in either of the cases provided for in the preceding clauses of this section, the orphans' court shall take such legal evidence as shall be offered, for the purpose of ascertaining whether the presumption of death is established, or may appoint a master to take such testimony and report his findings thereon; and no person shall be disqualified to testify by reason of his or her relationship as husband or wife to the presumed decedent, or of his or her interest in the estate of the presumed decedent.

(d) If satisfied, upon such hearing, or upon the report of such master, that the legal presumption of death is made out, the court shall so decree, and the court may determine in such decree the date when such presumption arose, and shall forthwith cause to be published for three successive weeks, in the manner provided in clause (a) of this section, a notice requiring the presumed decedent, if alive, to produce in court satisfactory evidence of his continuance in life, such evidence to be produced within twelve weeks from the date of the last publication of the notice in the case of an original application for the grant of letters, and within four weeks from such date in the case of an application for ancillary letters.

(e) If, within said period, evidence satisfactory to the orphans' court of the continuance in life of the presumed decedent shall be presented, said decree shall be vacated; but if such evidence shall not be forthcoming, such decree shall be confirmed absolutely, and it shall be the duty of the court to order the register of wills to issue letters of administration to the person thereto entitled, or to receive for probate the last will and testament of such presumed decedent and, if duly proved, to admit the same to probate and issue letters testamentary thereunder; and the said letters, until revoked, and all acts done in pursuance thereof and in

reliance thereupon, shall be as valid as if the presumed decedent were really dead.

(f) Whenever the said court shall enter a decree that the presumption of death of any person has been established, and such decree shall be confirmed absolutely, the real estate of the presumed decedent shall pass and devolve as in the case of actual death, and the persons entitled by will or under the intestate laws may enter and take possession. In case the presumption of death is thereafter rebutted by adequate proof that the presumed decedent is in fact alive, and said decree is vacated, said real estate shall revert to him as fully as though such decree had never been entered, subject, however, to payment of the costs and expenses of the proceedings and advertisement aforesaid. Such decree, when confirmed absolutely, may be recorded in the office of the recorder of deeds of the proper county in the deed-book, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the names of the persons taking the real estate, and, if so recorded, and the persons taking the real estate sell or mortgage the same, the purchaser or mortgagee shall take a good title, free and discharged of any interest or claim of the presumed decedent; but the persons taking such real estate shall not sell, convey or mortgage the same or any part thereof without first giving bond, in an amount to be fixed by the orphans' court and with sureties to be approved by said court, conditioned to account for and pay over to the presumed decedent, in case he is actually alive, the value of the real estate sold or conveyed, or, in case of the making of a mortgage, to pay the amount of the mortgage and interest thereon, or, in case of a foreclosure of such mortgage, to account for and pay over the value of the real estate mortgaged. When the presumed decedent shall have been absent and unheard of for twenty-one years, such bond shall be taken without sureties.

(g) The executor or administrator to whom letters have been issued upon the estate of a presumed decedent, as aforesaid, shall administer the estate in the same manner and with the same effect as the same would be administered under existing laws of this Commonwealth if the presumed decedent were in fact dead; and the orphans' court, at the audit of the account of an ancillary administrator of a presumed decedent, shall decree the balance, if any, shown thereby, to the expense of administration and the debts of the presumed decedent, due to residents of this Commonwealth, and the overplus, if any, to the executor or administrator of said presumed decedent in the foreign jurisdiction, for the purpose of administration and distribution.

(h) Before any distribution of the proceeds of the estate of such presumed decedent, the persons, other than creditors, entitled to receive the same shall respectively give sufficient real or personal security, to be approved by the orphans' court having jurisdiction, in such sum and form as the court shall direct, with condition that if the said presumed decedent shall in fact be at the time alive, they will respectively refund the amounts received by each on demand, with interest thereon. If any person or persons entitled to receive the same shall refuse or neglect or be unable to enter such security, the orphans' court may, upon petition of any person interested, and upon due notice to all persons interested, so far as such notice can reasonably be given, appoint a suitable person or corporation as trustee to receive and hold the share of the distributee refusing or neglecting or being unable to enter security as aforesaid until the further order of the court, such trustee not to be an insurer of the trust fund, and to be liable to the person or persons interested therein only for such care, prudence and diligence in the execution of the trust as other trustees are liable for. If the said court shall be satisfied, from the evidence adduced at the hearing to ascertain whether the pre-

sumption of death is established, or from the report of the master, that there is no likelihood of the presumed decedent's being still alive, then the said court may, at its discretion, accept refunding bonds from the distributees of the presumed decedent's estate without requiring sureties thereon.

(i) The orphans' court may revoke the said letters and vacate the decree that the presumption of death has been established, at any time, on due and satisfactory proof that the presumed decedent is in fact alive. After such revocation all the powers of the executor or administrator shall cease, but all receipts or disbursements of assets, and other acts previously done by him, shall remain as valid as if the said letters were unrevoked. The executor or administrator shall settle an account of his administration down to the time of such revocation, and shall transfer all assets, remaining in his hands, to the person as whose executor or administrator he has acted, or to his duly authorized agent or attorney. Nothing in this section contained shall validate the title of any person to any money or property received as surviving spouse, next of kin, heir, legatee or devisee of such presumed decedent, but the same may be recovered from such person, in all cases in which such recovery would be had, if this act had not been passed.

(j) After revocation of the letters and vacation of the decree that the presumption of death has been established, the person erroneously presumed to be dead may, on suggestion filed of record of the proper facts, be substituted as plaintiff or petitioner in all actions or proceedings, at law, in equity, or in any orphans' court, brought by the executor or administrator, whether prosecuted to judgment or decree or otherwise. He may, in all actions or proceedings previously brought against the executor or administrator, be substituted as defendant or respondent, on proper suggestion filed by himself, or by proper service of writ or other process, but shall not be compelled to go to trial

in less than three months from the time of such suggestion filed or process served. Judgments or decrees recovered against the executor or administrator before revocation and vacation, as aforesaid, of the letters and decree, may be opened on application by the presumed decedent, made within three months from the said revocation and supported by affidavit, denying specifically, on the knowledge of the affiant, the cause of action, or specifically alleging the existence of facts which would be a valid defense; but if, within the said three months, such application shall not be made, or being made, the facts exhibited shall be adjudged an insufficient defense, the judgment or decree shall be conclusive to all intents, saving the defendant's right to have it reviewed, as in other cases, on appeal. Notwithstanding the substitution of the presumed decedent as defendant in any judgment or decree, as aforesaid, it shall continue as a lien upon his real estate in the county for the period of five years from the date of its entry, as other judgments, unless and until it shall be set aside by the court below, or reversed in the proper appellate court.

(k) Whenever, hereafter, letters testamentary or of administration shall be issued upon the estate of any person, presumed to be dead, on account of absence of seven years or more from the place of his last domicile, in accordance with the foregoing provisions of this section, the person having custody of any will which may have been left by such presumed decedent, in case letters of administration have been issued, or of any later will, in case letters testamentary have been issued, or any creditor or any person interested in the estate, may file a petition in the orphans' court in which the proceedings to establish the death by presumption have been held, as aforesaid, setting forth the facts of the case, a copy of said will or later will, or an averment that such will exists, and the names of all persons interested in the estate of the presumed decedent. Upon the filing of such petition, said court,

after due notice to all parties in interest, may enter an order directing the register of wills to receive proof in support of the averments of said petition and, if established, to admit said will or later will to probate and, if an executor be named in said will, to revoke said letters of administration, or, in case an earlier will shall have been admitted to probate, to set aside such probate and revoke the letters testamentary issued thereunder.

(*l*) Thereupon the register of wills shall issue a citation to the person to whom letters of administration or letters testamentary have been issued, as aforesaid, and to all persons interested in the estate of the presumed decedent, to appear upon a day fixed, and to show cause why the said alleged will or later will should not be admitted to probate.

(*m*) Upon the return of the citation, if the register of wills shall be satisfied from all the evidence that may be adduced that the proposed will was, in fact, the last will and testament made by the presumed decedent before his departure or disappearance from his residence, the said will shall be admitted to probate as if the testator were in fact dead. If, upon such probate, it appears that an executor is named in the will, the letters of administration previously granted shall be revoked, and letters testamentary shall be issued to said executor, in the same manner and form as if the testator were in fact dead, but if no executor shall be named in such will, then a certified copy of said will shall be attached to the letters of administration theretofore issued, or to a certified copy of such letters. Thereafter the executor or administrator shall execute the said will according to its terms, and all property of the decedent shall be distributed and pass, as provided by said will, to the several legatees and devisees named therein. In case an earlier will shall have been admitted to probate, the letters testamentary issued thereunder shall be revoked and letters shall be issued under the said last will, or if no executor shall be named in said last will, then letters of administration

with the will annexed shall be issued to the person or persons entitled thereto.

(n) The costs attending the issuance or revocation of letters shall be paid out of the estate of the presumed decedent; and costs arising upon an application for letters which shall not be granted shall be paid by the applicant.

SECTION 7 (a) Before any register shall issue letters of administration, letters testamentary, or of administration with the will annexed, he shall administer an oath or affirmation to the person or persons receiving the same, in the following form, namely: You do swear (or affirm) that as executor of the last will and testament (or as administrator of the estate) of A. B., deceased, (as the case may be), you will well and truly administer the goods and chattels, rights and credits of said deceased, according to law; and also will diligently and faithfully regard and well and truly comply with the provisions of the law relating to collateral inheritances.

(b) In all cases where a corporation is or shall be charged with the execution of any trust, the president, vice-president, trust officer, secretary, treasurer or actuary of such corporation, shall make the oath or affirmation directed to be taken by private persons in such cases.

SECTION 8 (a) It shall be the duty of every register upon his granting any letters of administration, domiciliary or ancillary, of the goods and chattels of any person dying intestate, to take a bond or bonds, from the person or persons receiving such letters, with two or more sufficient individual sureties, or sufficient corporate security, or the register may, in his discretion, permit any corporation to which letters are granted to give its own bond without surety. In fixing the amount of any bond, respect shall be had to the value of the estate; and all bonds shall be in the name of the Commonwealth, with a condition in the following form, namely: The condition of this obligation is, that if the

above-bounden A. B., administrator of all and singular the goods, chattels and credits of C. D., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, which have come or shall come to the hands, possession or knowledge of him the said A. B., or into the hands and possession of any other person or persons, for him, and the same so made, do exhibit or cause to be exhibited into the register's office, in the county of _____, within thirty days from the date hereof, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his death, which at any time after shall come to the hands and possession of the said A. B., or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a just and true account of his said administration, at the expiration of six months from the date hereof, or when thereunto required by the orphans' court, and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the orphans' court of the county having jurisdiction, shall deliver and pay unto such person or persons as the said orphans' court, by their decree or sentence pursuant to law, shall limit and appoint, and shall well and truly comply with the laws of this Commonwealth relating to collateral inheritances, and if it shall hereafter appear that any last will and testament was made by the said deceased, and the same shall be proved according to law, if the said A. B., being thereunto required, do surrender the said letters of administration into the register's office aforesaid, then this obligation to be void, otherwise to remain in full force: *Provided*, That in every case of special administration, the form of the foregoing condition shall be modified so as to suit the circumstances of such case.

(b) It shall be the duty of the register of wills, in granting letters of administration with the will annexed, to take a bond as prescribed in the foregoing clause, that shall include adequate security for the faithful accounting for the proceeds of any sales of real estate the administrator may make under such will; and the sureties taken shall be liable therefor, as well as for any personal effects, to come into the hands of the administrator, who shall settle his account thereof before the orphans' court.

(c) Before the register shall issue letters testamentary to any executor, not being an inhabitant of this Commonwealth, he shall take from him a bond, with two or more sufficient individual sureties, being inhabitants of this Commonwealth, or with sufficient corporate security, or the register may, in his discretion, permit any corporation to which such letters are granted to give its own bond without surety.

In fixing the amount of any bond, respect shall be had to the value of the estate to be administered; and all bonds shall be in the name of the Commonwealth, with the following condition, namely: The condition of this obligation is, that the said A. B., executor of the last will and testament of C. D. deceased shall make a true and perfect inventory of all and singular the goods, chattels and credits of the said deceased, being within this Commonwealth, which have come or shall come to his hands, possession or knowledge, or into the hands and possession of any other person for him, and the same so made do exhibit into the office of the register of the county of _____ within

thirty days from the date hereof, and the same goods do well and truly administer, according to law, and make a just and true account of all his actings and doings therein, at the expiration of six months from the date hereof, or when thereunto lawfully required, and shall faithfully account for the proceeds of any sales of real estate he may make under such will, and shall well and truly comply with the laws of this Com-

monwealth relating to collateral inheritances and in all other respects with the laws of this Commonwealth relating to his duty as executor, then this obligation to be void, otherwise to remain in full force.

(d) If any register shall grant letters testamentary to any person not being an inhabitant of this Commonwealth, or shall grant any letters of administration to any person or persons whatsoever, without having in either case taken a bond in the manner hereinbefore prescribed, such letters shall be void, and every person acting under them shall be deemed, and may be sued, and in all respects treated as an executor of his own wrong; and the register granting the same, and his sureties, shall be liable to pay all damages which shall accrue to any person by reason thereof.

(e) In any case where application is made for letters testamentary or of administration on the estate of a decedent who was at the time of his death a fiduciary, it shall be within the discretion of the register of wills to whom such application is made to require the person or corporation to whom such letters are issued to enter, in addition to any other bond required by this act, a bond in a sufficient amount, with sureties as aforesaid, or, in case of a corporation, its own bond, with or without sureties, conditioned for the proper application of the property held by such decedent as fiduciary and coming into the hands and possession of the person or corporation to whom such letters are issued.

(f) All bonds taken by any register, in pursuance of this act, from any executor or administrator, may be excepted to before such register by any person interested, in respect of the sufficiency of the sureties therein, or the amount of the bond, or for any other cause. Whenever any such exception shall be so made to any such bond, the register shall give notice thereof to the executor or administrator and require him to appear before him in a reasonable time, not exceeding ten days, and show cause against the allowance of such

exception. If upon the hearing of the objections of all persons interested, and of such executor or administrator, or of such of them as shall appear, such register shall see cause, he shall order such executor or administrator to find additional sureties, or to give security in a larger amount, or make such other order as the case may require. If such executor or administrator shall refuse to comply with such order, or if he shall neglect so to do during the space of thirty days after the making thereof, the register shall revoke the letters granted to him, and grant other letters in such form as to the case shall require, to the person by law next entitled thereto, such person giving to such register the security by him ordered as aforesaid. No such exception shall be so made, or proceedings thereunto be had before the register, after three months elapsed from the time of the filing of a full and perfect inventory by such executor or administrator of the whole of the estate in question.

SECTION 9 (a) All bonds given or hereafter to be given by fiduciaries shall be held in trust for the use of the Commonwealth, and such person or persons as may be interested therein; and suits may be brought thereon, from time to time, by all persons interested therein, as provided in the sixth section of the act entitled, "An act relating to bonds, with penalties and official bonds," approved the fourteenth day of June, eighteen hundred and thirty-six.

(b) Whenever any fiduciary has heretofore given, or shall hereafter give, any bond conditioned for the due performance of his duties, or for the accounting for money in his hands, such fiduciary or any creditor, beneficiary, or other party in interest, may present a petition to the orphans' court of the proper county, alleging that the amount of such bond is greater than the exigencies of said trust require and setting forth the facts and circumstances upon which such allegation is based, and praying that such bond be reduced to an amount which shall be stated in the petition. At the

hearing of said petition, after such notice as the court may require, if any, the court may, at its discretion, reduce the bond to such an amount as it may deem proper and necessary to give adequate protection to all parties concerned, but not to an amount lower than that specified in said petition. The costs of said proceedings shall, at the discretion of the court, be paid out of the estate to protect which said bond was given, or by the petitioner.

(c) Any fiduciary, required by law or by the order of any orphans' court, to give a bond as such, may include as a part of the lawful expense of executing his trust such reasonable sum paid to a company, authorized under the laws of this state so to do, for becoming his surety on such bond as may be allowed by the court in which he is required to account, not exceeding, however, one per centum per annum on the amount of such bond.

SECTION 10. The executors or administrators of every decedent shall, immediately after the granting of letters testamentary or of administration to them, cause notice thereof to be given in one newspaper, published at or near the place where such decedent resided, and in the legal periodical if any designated by rule of court for the publication of legal notices, once a week, during at least six successive weeks, together with their names and places of residence, and in every such notice they shall request all persons having claims or demands against the estate of the said decedent to make known the same, and all persons indebted to the said decedent to make payment, to them without delay.

SECTION 11 (a) It shall be the duty of the said executors or administrators to make a true and perfect inventory of all the goods, chattels and credits of the deceased, as far as they may know or can ascertain them, and file the same in the register's office within thirty days from the time of administration granted: *Provided*, That in the case of a will of a decedent, not

resident, at the time of his decease, within this Commonwealth, proved in another state or in a foreign country, whereof letters testamentary or of administration with the will annexed may be granted in this state, or in a case of ancillary administration of the estate of a non-resident intestate, the inventory herein mentioned shall be of the goods, chattels and credits of the deceased within this Commonwealth.

(b) In case of the failure or refusal of any executor or administrator to file an inventory as aforesaid, the orphans' court shall have power, on petition of any creditor of the decedent or any party in interest, to issue a citation to such executor or administrator to show cause why he should not file such inventory and, if no sufficient cause be shown on the return of such citation, said court may order the filing of such inventory, and may enforce such order by attachment as in other cases.

(c) All bonds, notes and other evidences of debt, also all other claims and demands for money, or any other personal property owned or held by the deceased at the time of his decease, shall, as far as the same may be known to his executors or administrators, be included in the inventory to be made and returned as aforesaid.

(d) The appointment of any person to be an executor shall in no case be deemed a release or extinguishment of any debt or demand which the testator may have had against him, but such debt shall be included in the inventory, and be subject to distribution like other personal estate.

(e) The rents of any real estate accruing to any person as tenant for life of such estate, who had demised the same, for a term or time not fully expired at his decease, shall go to and be vested in the executors or administrators of such tenant, and the due proportion of such accruing rent, to be computed according to the time elapsed at the decease of such tenant, shall be included in the inventory of personal assets.

(f) The arrearages of any rent-charge, or other rent or reservation in nature of a rent, due at the death of any tenant of such rent, in fee-simple or fee-tail, or for term of life or lives, shall go to and be vested in the executors or administrators of such tenant, and be included in the inventory, and appraised as personal assets.

(g) All estates in lands or tenements, of which the decedent was seised at the time of his decease, for the life or lives of another person or persons, shall, unless such estate have been limited to the decedent and his heirs, go to the executors or administrators of such decedent, and be included in the inventory, and be subject to distribution in like manner as leases for terms of years.

(h) Whenever personal property or assets of any kind, not contained in the inventory made and returned as aforesaid, shall afterwards come to the possession or knowledge of the executor or administrator, he shall make an inventory thereof and file the same in the office of the proper register, within thirty days from the time of the discovery thereof.

(i) Every executor or administrator shall cause a just appraisement to be made, by two or more appraisers, of the goods, chattels and credits of the decedent, of which an inventory is to be made, agreeably to the preceding clauses of this section; and the said appraisers shall be sworn or affirmed well and truly, and without prejudice or partiality, to value and appraise said goods, chattels and credits, and in all respects to perform their duty as appraisers, to the best of their skill and judgment.

(j) It shall be the duty of the executors and administrators, having given convenient notice to the appraisers of the decedent's estate, of a time and place for making the inventory and appraisement thereof, to produce or make known to them, in the presence of such of the persons interested in the estate as may attend, the whole of the personal estate of the decedent,

which may have come to their possession or knowledge; and the inventory and appraisement thereof being finished, and certified by the appraisers, to file the same in the office of the proper register.

(*k*) The appraisers of the estate of a decedent shall be respectively entitled to receive therefrom, as compensation for their services in appraising the estate as aforesaid, such sum as the orphans' court having jurisdiction of the accounts of the executors or administrators shall deem proper, taking into consideration the labor, skill and responsibility involved.

SECTION 12 (*a*) The widow, if any, or, if there be no widow or if she has forfeited her rights, then the children forming part of the family of any decedent dying, testate or intestate, within this Commonwealth, or dying outside of this Commonwealth, but whose estate is settled in this Commonwealth, may retain or claim either real or personal property, or the proceeds of either real or personal property, belonging to said estate, to the value of five hundred dollars, and the property so retained or claimed shall not be sold, but suffered to remain for the use of the widow or children. It shall be the duty of the executor or administrator of such decedent to have the said property, if personal, appraised and set apart to said widow or children by the appraisers appointed to appraise the other personal estate of the decedent, or, if real, then by two appraisers to be appointed by the orphans' court, who may be the same persons appointed to appraise the personal estate. If said five hundred dollars, or any part thereof, shall be claimed out of money or the proceeds of real or personal property belonging to the estate, it shall be the duty of the executor or administrator to set apart to said widow or children the amount so claimed out of said money or out of the proceeds of said real or personal property after he shall have sold the same. Should any or all of the appraisers of the other personal estate be unable to make the appraisement of personal property provided for

by this section, or should there be no such appraisers, the orphans' court of the proper county may appoint a properly qualified appraiser or appraisers to act in the place of said appraiser or appraisers of the other personal estate of the decedent.

(b) The provisions of this section allowing the widow or children of a decedent to retain real property, or the proceeds thereof, to the value of five hundred dollars shall not affect or impair any liens for the purchase money of such real property.

(c) Such appraisers shall be sworn or affirmed to appraise the property claimed by the widow or children of the decedent under the provisions of this act. The compensation of such appraisers for making an appraisement of personal property shall be included in the compensation allowed by the orphans' court for the performance of their duties as appraisers of the other personal estate of the decedent, and shall be paid out of the decedent's estate; and the compensation of appraisers appointed by the orphans' court as aforesaid shall be fixed by said court and shall also be paid out of the decedent's estate.

(d) Upon due proof of compliance with such requirements as to notice, by advertisement or otherwise, as may be prescribed by the orphan's court of the proper county by general rule or otherwise, such court may enter a decree directing the payment of the money, or confirming the appraisement of the personal or real estate chosen by said widow or children, and said appraisement, signed and certified by the appraisers and approved by the court, shall be filed among the records thereof: *Provided*, That all expenses of such advertisement or notice shall be paid out of the decedent's estate.

(e) 1. In the case of any decedent leaving to survive him any minor child or children forming part of his family, and no widow, his administrator or executor, without request made to him by any one, shall have appraised and set aside, for the use and benefit of all

such minor children of said decedent, property to the full value of five hundred dollars.

2. The guardian of said child or children, and if there be none, the administrator or executor, with the appraisers, shall make selection of the property to be set aside, and in so doing, the said guardian, or the said administrator or executor, with the appraisers, shall be governed by the necessities of such child or children, under the circumstances of each case.

(f) When any decedent shall leave to survive him a widow or children and an estate not exceeding in value five hundred dollars it shall be lawful for such widow, or for such children by any next friend or guardian, if to said children the right belongs, to petition the orphans' court of the proper county for the appointment of two appraisers, who shall appraise and set aside any property of said decedent, selected by such widow or by such next friend or guardian, in the same manner and with the same effect as if letters testamentary or of administration had issued and the appraisers been selected in the usual way. Such appraisers shall be sworn or affirmed, and shall receive for their services such compensation as shall be allowed by said court.

(g) Whenever the widow or children of any decedent shall claim the sum of five hundred dollars in value, or any part thereof, under the provisions of this act, out of real estate left by said decedent, and the real estate appraised cannot be divided so as to set apart the amount so claimed in value without prejudice to or spoiling the whole or any parcel of said real estate, and the appraisers may have appraised or shall appraise and value the same at an amount equal to or exceeding the amount claimed by said widow or children out of said real estate, over and above the liens that are upon it, the orphans' court to which such application shall be made may confirm such appraisal and set apart, for the use of the widow or children, such real estate, subject to whatever liens may be against the same; con-

ditioned, however, that the widow or children shall pay the amount of the valuation or appraisement, over and above the liens that may be against the said real estate, in excess of the amount claimed by said widow or children out of said real estate, within one year from the date of confirmation of such valuation. If the widow or children making such claim shall fail to make payment as above provided, the court, on application of any person interested, shall direct the executor or administrator to sell the said real estate, and the procedure in such case shall be the same as is provided by law in cases of sales of real estate for the payment of debts of a decedent

(h) The real estate, if taken by the widow or children as aforesaid, shall vest in her or them and her or their heirs or assigns, subject to any liens upon it, on her or their paying the surplus over and above the amount claimed by her or them out of said real estate to the parties entitled thereto. Should the real estate be sold as provided in clause (g) of this section, then the sum of five hundred dollars or such part thereof as may be claimed out of the real estate shall be paid out of the purchase money to the widow or children, and the balance, after payment of costs and expenses, distributed to the heirs or other persons legally entitled thereto.

(i) In all cases where the appraisement of property, real or personal or both, is confirmed and the property set apart to the widow or children under the provisions of this section, said widow or children shall be entitled to receive for her or their own use the net rents, income, interest and dividends thereof from the date of the death of such decedent: *Provided*, That where the property so set apart shall consist of real estate appraised at an amount exceeding the amount claimed by said widow or children out of said real estate, over and above the liens that are upon it, and the widow or children shall fail to pay the excess over the amount so claimed as provided in clause (g) of this section,

and the property shall thereupon be sold, there shall be deducted from the sum to be paid to said widow or children out of the proceeds of such sale a proportionate part of the rents and income of such real estate received by such widow or children.

(j) Whenever the widow or children of any decedent shall claim the said five hundred dollars in value, or any part thereof, under the provisions of this section, out of the real estate left by the said decedent and lying in any county of this State other than the county wherein said decedent shall be domiciled at the time of his death, and the orphans' court having jurisdiction of the accounts of the personal representatives of said decedent shall be satisfied, upon petition filed, of the propriety of allowing such claim, it shall be lawful for such court to make a decree authorizing such widow or children to file her or their petition in the orphans' court of the county wherein such real estate may lie, or, in a case where the real estate is divided by a county line, in the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there be no improvements, in either county, praying for the appointment of two appraisers. Upon the filing of such petition duly verified, it shall be the duty of the latter court to appoint such appraisers, who shall be duly sworn or affirmed, and shall appraise said real estate, and shall be compensated as directed by said court; and proceedings shall thereupon be had in said court and subject to its supervision and control, in the same manner, and with the same effect as is provided in clauses (g), (h) and (i) of this section. In every such case a certified copy of the decree confirming such appraisement, or of such decree of sale and the confirmation thereof, as the case may be, shall forthwith be filed with the clerk of the orphans' court having jurisdiction of the accounts of the personal representatives of the said decedent. The latter court shall in all cases have exclusive jurisdic-

tion of the distribution of the surplus paid by such widow or children, or of the proceeds of such sale, after the payment of costs and expenses, as the case may be.

(k) In all cases where a decree shall be entered by any orphans' court confirming an appraisement of real estate and setting apart the same for the use of the widow or children, a certified copy of such decree shall be recorded in the office of the recorder of deeds of each county where such real estate shall lie, in the deed book, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name or names of the widow or children, and shall be registered in the survey bureau, or with the proper authorities empowered by law to keep a register of real estate, if any there be, in each of said counties. The charges for recording and registering shall be the same as are provided by law for similar services, and shall be paid out of the estate of the decedent.

SECTION 13 (a) All debts owing by any person within this State, at the time of his decease, shall be paid by his executors or administrators, so far as they have assets, in the manner and order following, namely: One. Funeral expenses, medicine furnished and medical attendance given during the last illness of the decedent, and servants' wages, not exceeding one year; Two. Rents, not exceeding one year; Three. All other debts, without regard to the quality of the same, except debts due to the Commonwealth, which shall be last paid.

(b) No executor or administrator shall be compelled to pay any debt of the decedent, except such as are by law preferred in the order of payment to rents, until six months be fully elapsed from the granting of the administration of the estate.

SECTION 14. Rents of real estate accruing after the death of the owner of such real estate, who shall die on or after the day on which this act shall go into

effect, shall be assets for the payment of debts of such decedent whenever the personal estate shall be insufficient therefor. Whenever the personal estate of such decedent shall appear to be probably insufficient for the payment of debts, the orphans' court having jurisdiction of the accounts of the executor or administrator shall, upon application of any creditor of the decedent, or upon application of the executor or administrator, or of any other person interested, authorize and direct the executor or administrator to collect such rents for such period as the court shall fix. In such case, the executor or administrator shall have power to collect such rents by action at law, distress, or otherwise, as the decedent, in his lifetime, might have done as to rents of such real estate; and rents so collected shall be accounted for by the executor or administrator in his account of the personal estate of the decedent.

SECTION 15. (a) No debts of a decedent, including the cost of settlement of the estate, and the funeral expenses of the decedent, except as provided in clauses (b), (g) and (h) hereof, shall remain a lien on the real estate of such decedent longer than one year after the decease of such debtor, unless within said period an action for the recovery thereof be brought against the executor or administrator of such decedent, and such action shall be indexed, within said period, against the decedent and such executor or administrator, in the judgment index in the county in which such action is brought, and also in the county in which the real estate sought to be charged is situate, and be duly prosecuted to judgment; and then to be a lien only for the period of five years unless the same be revived by writ of scire facias against the decedent, his heirs, executors, or administrators, and the devisee, alienee, or owner of the land sought to be charged, in the manner now provided in the case of the revival of judgments.

The plaintiff may, at his election, join such surviving spouse and heirs, and the devisee, alienee, or owner of

the land in such original action, in which event such action shall be indexed as aforesaid against all defendants so joined.

(b) No bond, covenant, debt or demand which is not payable within the said period of one year after the decease of the debtor, shall remain a lien upon the real estate of such decedent longer than one year after his death, unless, within said period after his decease, a copy or particular written statement thereof be filed in the office of the prothonotary of the county where the real estate to be charged is situate, and be indexed against the decedent and the executor or administrator in the judgment index in the county where the executor or administrator resides and also in the county in which the real estate sought to be charged is situate; and then to be a lien only for the period of one year after the said bond, covenant, debt, or demand becomes due, unless within said period of one year an action for the recovery thereof be brought, indexed and duly prosecuted to judgment as provided in clause (a) of this section.

(c) The provisions of clause (a) of this section shall be retroactive: *Provided, however,* That in case of any bond, covenant, debt, or demand that would be sooner barred, an action for the recovery thereof may be commenced within one year after the passage of this act, in manner as provided in clause (a) of this section.

(d) It shall be the duty of the prothonotary of any county of this Commonwealth, when an action is brought or statement is filed as aforesaid in his office, upon praecipe of the plaintiff or his attorney, to index the same against the decedent, his executor or administrator, and any other defendants therein, in the judgment index, as other liens are indexed, and to certify the same as liens in any certificate of liens that he may be required to make by virtue of his office. The prothonotary of any court in which said action may be brought, shall, upon request, furnish a copy of such

praecipe, which, when duly certified, under the seal of the court, may be filed in any other county of this Commonwealth in which the real estate sought to be charged with the debts of such decedent may be situate, and when so filed shall be indexed, against the parties named therein, upon the judgment index in such county.

(e) No execution for the levy or sale of any real estate of any decedent shall be issued upon any judgment obtained in an action against his personal representatives under the foregoing clauses of this section unless the surviving spouse and heirs and the devisee, alienee or owner of the land sought to be charged, and the guardians of such as are minors shall have been made parties to such action, or, if they shall not have been so made parties, unless they shall be warned by a writ of scire facias issued against them on such judgment. If any of the parties reside outside of the county, the court may, by general rule or special order, direct service of such writ of scire facias by publication or otherwise.

(f) Judgments which were not liens on the real estate of the decedent by entry or revival, by due process of law, within five years prior to the death of such decedent, shall not be revived as liens of record against real estate by the death of the defendant, but shall rank and be treated simply as ordinary debts not of record, and the lien thereof shall be continued after the expiration of one year from the decease of such debtor only by writ of scire facias to revive, issued within one year after the death of the decedent, indexed as provided in clauses (a) and (d) of this section, and duly prosecuted to judgment; and then to be a lien only for the period of five years unless the same be revived by writ of scire facias as provided in clause (a) of this section.

(g) All judgments which at the time of the death of a decedent shall be liens on real estate owned by said decedent at the time of his death, or on real estate which shall have been conveyed by deed not duly re-

corded during his lifetime, shall continue to bind such real estate during the term of five years from his death, although such judgments be not revived by scire facias or otherwise after his death. Such judgments shall, during such term, rank according to their priority at the time of such death, and after the expiration of such term such judgments shall not continue liens on the real estate of such decedent unless revived by scire facias or otherwise, according to the laws regulating the revival of judgments. Any judgment against such decedent which may be a lien upon real estate sold or aliened by such decedent during his life may be revived by writ of scire facias, according to law; and, for the purpose of any such revival, the writ of scire facias may be issued in the name of such decedent, with the same force and effect as if it were issued in the name of his executors, administrators, or legal representatives; but, before any judgment shall be entered thereon, the legal representatives shall be made parties defendant, and a scire facias shall be served on such legal representatives.

(h) Nothing contained in this section shall in any way affect or impair the lien of any mortgage given and executed and duly recorded during the lifetime of any decedent; but the bond secured by such mortgage, except as to real estate on which said mortgage is a lien, shall be subject to all the provisions hereof.

(i) No execution for the levy or sale of any real or personal estate of any decedent shall be issued upon any judgment obtained against him in his lifetime, unless his personal representatives have been first warned by a writ of scire facias to show cause against the issuing thereof, notwithstanding the teste of such execution may bear date antecedently to his death.

(j) In all cases where property, real or personal, of a decedent is sold upon an execution, and more money raised than is sufficient to pay off liens of record, the balance shall be paid over to the executor or administrator for distribution; but before any such payment

shall be made, such executor or administrator shall give bond, to the satisfaction of the court, conditioned for the legal distribution of such money: *Provided always*, That such money shall be distributed as the real estate of which it is the proceeds would have been.

(k) In every case of an execution against the executors or administrators of a decedent, whether founded upon a judgment obtained against such decedent in his lifetime, or upon a judgment obtained against them in their representative character, if it shall be made to appear, to the satisfaction of the court issuing such execution, that there is reason to believe that the personal assets and the rents of real estate are insufficient to pay all just demands upon the estate, such court shall thereupon stay all proceedings upon such execution, until the executors or administrators shall have made application to the proper orphans' court for the sale of the real estate of the decedent, or for the apportionment of the assets, or both, as the case may require.

(l) It shall be competent for the court, in the cases aforesaid, on application of the plaintiff in such judgment, or of any other person interested as heir, devisee or otherwise, to order the executors or administrators to make application to the orphans' court for the purpose as is hereinbefore mentioned, and to enforce such order by attachment.

SECTION 16 (a) Whenever it shall satisfactorily appear to the executor or administrator that the personal estate of the decedent, together with the rents of real estate, is insufficient to pay all just debts and the expenses of the administration, he shall proceed, without delay, in the manner hereinafter provided, to sell or mortgage, under the direction of the orphans' court having jurisdiction of his accounts, so much of the real estate as shall be necessary to supply the deficiency.

(b) The orphans' court which possesses jurisdiction of the accounts of an executor or administrator shall have power to authorize a sale or mortgage of real

estate by such executor or administrator in the following cases, viz.:—

1. On the application of the executor or administrator, setting forth that the personal estate and the rents of real estate of the decedent are insufficient for the payment of debts.

2. On the application of such executor or administrator, or of any creditor of the decedent, setting forth that on the final settlement of the administration account, it appears that the personal assets together with the rents of real estate of the decedent are insufficient to pay the balance appearing to be due from the estate of such decedent, either to the accountant or creditors.

(c) No authority for the sale or mortgage of real estate, for the payment of debts of a decedent, shall be granted until the executor or administrator shall have exhibited to the court having jurisdiction of his accounts a true and perfect inventory and conscionable appraisement of all the personal estate whatsoever of the decedent, together with a full and correct statement of all the real estate of such decedent, wherever situated, which has come to his knowledge, and of the rental value of such real estate; and also a just and true account, upon oath or affirmation, of all the debts of the decedent which have come to his knowledge.

(d) When a mortgage authorized under the provisions of this section shall fall due or shall be about to fall due, the orphans' court which authorized such mortgage may, on the application of the executor or administrator or of any party in interest, and although the period of the lien of the decedent's debts may have expired at the time of such application, authorize the refunding of such mortgage and the making of a new bond and mortgage, the proceeds of which may be used for the payment and satisfaction in whole or in part of the said existing mortgage and necessary expenses. Such new mortgage may be for such period and on such terms as to said court shall seem advisable.

(e) In all cases where an application shall be made to the court for a decree authorizing the sale or mortgage of real estate under the provisions of this section, the court may appoint a suitable person as master to investigate the facts of the case, and to report upon the expediency of granting the application, and the amount to be raised by such sale or mortgage; and upon such report being made, the court may decree accordingly.

(f) In all cases where the carrying out of any decree of the orphan's court under the provisions of this section shall involve the receipt of money by the person carrying it out, the court shall direct the person acting under the decree to file a bond to the Commonwealth in a sufficient amount conditioned for the proper application of all moneys to be received, which bond shall inure to the benefit of all parties interested and be executed by two individual sureties or by one corporate surety, approved by the court, and no such decree shall be executed until such bond, with sureties as may be required, shall be filed: *Provided*, That where a corporation, duly authorized by law, shall be designated to carry out any such decree, the court may, in lieu of security as aforesaid, permit such corporation to enter its own bond without surety.

(g) Whenever, by the provisions of this section, it shall be lawful for the court to order the public sale of real estate, public notice of such sale shall be given by the person who is to make the sale, once a week for a period of three weeks before the day appointed therefor, by advertisement in at least one newspaper published in the county, if there be one, or, if there be none, then in an adjoining county; and in all cases, notice shall also be given by handbills, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such estate.

(h) Whenever, under the provisions of this section, the court has power to authorize or confirm a sale of real estate, the same may be made upon such terms as the court shall approve, all unpaid purchase money to be secured on the premises by mortgage.

(i) All deeds or mortgages executed in pursuance of any decree of the court under the provisions of this section may be acknowledged before any officer or person now or hereafter authorized by the laws of this Commonwealth to take the acknowledgments of deeds and other instruments of writing to be recorded therein.

(j) 1. In all cases where the sale of real estate shall be made by an executor or administrator under an order of, or confirmed by, the orphans' court, or where the making of a mortgage by such executor or administrator shall be authorized by said court, under the provisions of this section, and the letters testamentary or of administration shall be revoked, or the executor or administrator shall be removed by the court, or shall die, or become insane, or otherwise be incapable, before a conveyance is made to the purchaser, or before a mortgage is executed and delivered, it shall be lawful for the successor of such executor or administrator, having first given security, to be approved by the said court, for the faithful appropriation of the proceeds of such sale or mortgage, to execute and deliver to the purchaser a deed of conveyance for the estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver said mortgage. If there shall be no such successor who shall have given security as aforesaid, the said court shall have power, on petition of the purchaser, to direct the clerk of the court to execute and deliver to the purchaser the necessary deed of conveyance, on his full compliance with the terms and conditions of sale, paying into court the moneys payable, and executing and delivering to the clerk any bond and mortgage required by the said terms and conditions,

which moneys and bond and mortgage shall remain subject to the disposition of the court; or, where the making of a mortgage by an executor or administrator shall be authorized by said court, the court, under the circumstances aforesaid, shall have power to direct the clerk of the court to execute and deliver such mortgage. The like proceedings may be had where an executor or administrator shall neglect or refuse to execute and deliver such deed or mortgage for the space of thirty days after due notice of an order of the court requiring him to execute and deliver the same.

2. In all cases where the sale of real estate shall be made by co-executors or co-administrators under an order of, or confirmed by, the orphans' court, or where the making of a mortgage by such co-executors or co-administrators shall be authorized by said court, under the provisions of this section, and one or more of such co-executors or co-administrators shall be removed by said court, or shall die, or become insane, or otherwise be incapable, before a conveyance is made to the purchaser, or before such mortgage is executed and delivered, said court may, upon the facts being made to appear by petition duly verified, authorize the surviving or remaining executor or executors, administrator or administrators, to execute and deliver to the purchaser a deed of conveyance for the real estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver such mortgage.

3. Where authority is or shall be given by decree of any orphan's court to executors or administrators to sell real estate, under the provisions of this section, and any of such executors or administrators shall have died, been removed, become insane or otherwise be incapable or cease to act, before a sale is effected, in all such cases, said court may, upon the facts being made to appear by petition duly verified, authorize the surviving or remaining executor or executors, administrator or administrators to effect such sale with as

full effect in all particulars, as if effected or executed by the executors or administrators in office at the time the sale was originally decreed.

4. Every sale made, and every deed or mortgage executed and delivered in pursuance of, and agreeably to the provisions of this section shall vest the property therein described in the grantee or mortgagee, as fully and effectually as if the same had been made, executed and delivered by all the executors or administrators to whom the authority to sell or mortgage was originally given.

5. In all cases of sales or mortgages under the order of, or confirmed by the orphans' court, under the provisions of this section, the title of the purchaser or mortgagee shall not be affected by the subsequent revocation of the letters testamentary or of administration of the executor or administrator making such sale or mortgage, or by the subsequent removal of the executor or administrator making such sale or mortgage.

6. Whenever, in pursuance of proceedings in the orphans' court of any county under the provisions of this section, any person therein described as an executor or administrator shall grant and convey or mortgage any real estate, in which proceedings security shall be duly entered by him or her, under the order or decree of the court, no irregularity or defect in his or her original appointment, or the absence of any proper qualification in respect thereto, shall affect the title of the grantee or purchaser, or the liability of the sureties, but the same shall be as valid in all respects, in any case within its jurisdiction, give authority as if such irregularity or defect had not existed.

(k) Whenever any orphans' court, having jurisdiction under this section to decree a sale or mortgage of real estate, shall issue its order to any executor or administrator to sell or mortgage such real estate, and to any executor or administrator to bid at such sale, and shall confirm the sale to such fiduciary, or shall

authorize the making of such mortgage to any executor or administrator, the said court may make an order directing its clerk to execute a deed or mortgage, as the case may be, for said real estate to such purchaser or mortgagee, who shall give security and shall account for the amount of said purchase money or mortgage money, in the settlement of his accounts, to said court.

(l) 1. When the real estate, with respect to which application shall be made to the orphans' court having jurisdiction of the accounts of the executor or administrator, in cases of sales or mortgages for the payment of debts of decedents under clause (b) of this section, is situated in the same county, the said court may order the sale or mortgage of such part or so much of such real estate as to them shall appear necessary. When the real estate is situated wholly in another county or counties, and the orphans' court to which such application shall be made shall be satisfied of the propriety of a sale or mortgage of some portion of such real estate not within their jurisdiction, it shall be lawful for such court to make a decree authorizing the raising of so much money as the said court may think necessary, from real estate situated in such county or counties as they may designate; and thereupon it shall be the duty of the orphans' court of the county wherein the real estate so designated is situated, upon the petition of such executor or administrator, to make an order for the sale or mortgage, as they shall think expedient, of so much and such parts of such real estate as shall, in their opinion, be necessary to raise the specified sum; and such executor or administrator shall in all cases make return of his proceedings, in relation to such sale or mortgage, to the orphans' court of the county in which the real estate so sold or mortgaged lies: *Provided*, That where the orphans' court to which such application shall be made shall make a decree authorizing the raising of money from real estate which is wholly without

the county where such application shall be made and is divided by a county line, the further proceedings shall be in the orphans' court of the county where the mansion house is situated, or, if there be no mansion house, in the county where the principal improvements are, or, if there be no improvements, in either county.

2. When application shall hereafter be made to the orphans' court having jurisdiction of the accounts of any executor or administrator for leave to sell or mortgage the real estate of a decedent or any part of the same for the payment of debts of such decedent under the provisions of this section, and any part of said real estate is situated partly in the county where said application shall be made and partly in one or more other counties, by reason of a county line or lines running through the same, the said court shall have power to order and direct the sale or mortgage of the whole or any part of said tract of land, irrespective of the county boundary lines, and such sale or mortgage shall be as effectual to pass the title of such real estate to the purchaser or mortgagee as if the whole of said tract of land had been within the boundaries of the county having jurisdiction of the accounts of the executor or administrator. Notices of said sale or mortgage, as required by this section, shall be given in all the counties in which the land is situated, and a certified copy of all proceedings in connection with said sale or mortgage shall be filed in the orphans' court of each county in which said land is situated. Any mortgage taken by such executor or administrator to secure the purchase money, or any part thereof, shall be duly recorded in each of the counties in which said lands lie, as now required by law.

(m) 1. The orphans' courts of the several counties of this Commonwealth, in all cases where, under the provisions of this section, such courts have power to order the sale of real estate, may authorize or direct a private sale, if, in the opinion of the court, under all the circumstances, a better price can be obtained at

private than at public sale, as where the interest shall be undivided, or for any other sufficient cause.

2. Before authorizing or directing any private sale of real estate for payment of debts of a decedent, public notice thereof shall be given by advertisement printed in at least one newspaper, published in the county where such real estate is situated, once a week for a period of three weeks prior to the date fixed by such order for authorizing or directing such sale; and also written or printed notices, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such real estate; and, before authorizing or directing such sale, the court shall require proof, by affidavit to be filed in the proceeding, that notice as aforesaid has been given. Such notice shall specify the location and description of the real estate proposed to be sold, the name of the proposed purchaser and the price agreed to be paid.

3. On the day fixed by such order and notice for authorizing or directing such private sale, any creditor of such decedent, or party interested as heir, devisee or intending purchaser, or any legatee whose legacy is, by the express terms of the will, or by law, charged on such real estate, may appear and object to such private sale on account of the insufficiency of the price, and, if such objection be sustained, may offer to give or pay a substantial increase for such property, and the court, at its discretion, may thereupon authorize or direct such sale, or refuse to authorize or direct the same, and accept any substantial increased offer, and may authorize the sale of such property to such new bidder upon compliance with the conditions of sale and giving such security as shall be directed by the court; or, such creditor, party interested or legatee may appear as aforesaid and object to such sale on any legal or equitable grounds: *Provided*, That nothing herein contained shall be construed to affect the

existing law with respect to objections to public sales.

(n) All public sales of real estate under the provisions of this section shall be subject to confirmation by the court; but in the case of private sales authorized or directed under the provisions of this section, no return or confirmation shall be necessary.

(o) All public or private sales of real estate under the provisions of this section shall have the effect of judicial sales as to the discharge of liens upon the real estate so sold: *Provided*, That the court may decree a sale of the real estate freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage, by writing filed in said court, shall consent to the sale being so made.

(p) Whenever a public or private sale of real estate shall be authorized or directed by any orphans' court under the provisions of this section, the person or persons purchasing the real estate so sold and taking title thereto in pursuance of the decree of the court, shall take such title free and discharged of any obligation to see to the application of the purchase money.

SECTION 17 (a) It shall and may be lawful for any executor, administrator, trustee, or any party interested in the real estate of any decedent, to present a petition to any court having jurisdiction of the settlement of such estate, setting forth all the particulars, and also that there are just and reasonable grounds for believing that said decedent left no debts not of record, and that it is desirable to have the real estate of said decedent relieved from any lien now given by law for such debts.

(b) Said court may hear and determine the same, or refer such petition to a master, whose duty it shall be to inquire diligently into the facts and circumstances alleged in such petition, and report the same to said court. The court may in its discretion direct such notices to be given of such application, by publication or otherwise, as it may deem necessary.

(c) It shall be the duty of said court, upon being fully satisfied as to the truth and justice of the matters alleged in any such petition, to decree that the real estate of such decedent shall be held and enjoyed free and clear of any lien of debts not of record of said decedent, and said court shall require the person or persons entitled to said real estate to enter bond, in such form and amount, and with or without sureties, as the court may in its discretion determine, conditioned for the payment by such person or persons of an amount sufficient to pay any debts of the decedent not of record, which may thereafter be proved and which would have been liens upon said real estate but for such decree.

SECTION 18 (a) Where any person shall have, by contract in writing, agreed to sell and convey any real estate in this Commonwealth, and died seised or possessed thereof, or of an undivided interest therein, or where any person shall have purchased, in writing, any real estate in this Commonwealth and died without paying the purchase money thereof, it shall be lawful in all such cases for the executor or administrator of the deceased vendor, or for the vendor when the purchaser may have died, or for the purchaser of such real estate, or, when he has died, for his executor or administrator, or for any other person interested in such contract, to petition the orphan's court having jurisdiction of the accounts of the executor or administrator of the deceased vendor or the deceased purchaser, as the case may be, setting forth the facts of the case. After due notice of such petition to the persons interested, according to the nature of the proceeding, to appear in such court, on a day certain, and answer the petition, such court shall have power, if the facts be sufficient in equity, no sufficient cause being shown to the contrary, to decree specific performance of such contract according to the true intent and meaning thereof.

(b) The aforesaid remedy, by petition to the orphans' court, shall hereafter be exclusive.

(c) When any petition for the specific performance of any such contract shall have been filed, it shall be the duty of the prothonotary of the court of common pleas of the county in which such real estate or any part thereof shall lie, on being certified by the clerk of the orphans' court in which such petition shall have been filed of the fact of such filing, to enter the same upon the judgment index under the name of the respondent in such petition, and to certify the same as *lis pendens* in any certificate of search that he may be required to make by virtue of his office.

(d) When such order or decree for the specific performance of any such contract shall have been made, and the purchase money paid or secured, to be paid according to the terms of such contract, it shall be the duty of the vendor, or, when he shall be deceased, of his executors or administrators, to execute such deed of conveyance as shall be directed by the court in conformity with the intention of such contract. Such deed, being so made by such executors or administrators, shall have the same force and effect to pass and vest the estate intended as if the same had been executed by the decedent in his lifetime. In the case of an order or decree for specific performance by the executors or administrators of a deceased vendee, the court shall enter a decree for payment by such executors or administrators, out of the estate of their decedent, of the amount of purchase money, with interest if any, which decree may be enforced in like manner as other decrees of the orphans' court for the payment of money. The liability for the costs of such proceedings shall be in the discretion of the court.

(e) Like proceedings may be had in all respects wherever any parol contract shall have been entered into by any person for the conveyance of real estate within this Commonwealth and the purchaser shall have died without fully executing such contract, or

wherever any person may have made such parol agreement and died seised or possessed of such real estate and no sufficient provision for the performance of such contract shall have been made by the decedent, in all cases where such parol contract shall have been so far executed that it would be against equity to rescind the same.

(f) In all cases of specific performance of contract which may hereafter be decreed by any orphans' court under the provisions of this section, where the party to whom the deed is to be made is an executor or administrator of the deceased vendor, the deed shall be made, as in other cases, by the co-executor or co-administrator, if there be one; and if there be none, the court may make an order directing its clerk to execute such deed and deliver the same to the grantee therein named, upon such terms as the court shall see fit to require from the grantee, as executor or administrator of the decedent, for securing the faithful appropriation of the unpaid purchase money.

SECTION 19. Whenever a devise or bequest shall be made to any corporate body, by any last will and testament, the executors thereof shall, within three months after they undertake the execution of such will, make known, by letter addressed to such corporate body, the nature and amount of such devise and bequest, together with their names and places of residence.

SECTION 20. If, after deducting the amount of debts of the testator and the expenses of administration, the residue shall not be sufficient to discharge all the pecuniary legacies bequeathed, an abatement shall be made, in proportion to the legacies so given, unless it shall be otherwise provided by the will.

SECTION 21. Legacies, if no time be limited by the will for the payment thereof, shall, in all cases, be deemed to be due and payable at the expiration of six months from the death of the testator. Interest on all pecuniary legacies, whether bequeathed directly or in trust, shall, unless a contrary intention appear by the

will, begin to run from the expiration of one year from the death of the testator, except that if the account of the executor be filed and confirmed and distribution awarded before the end of such year, then interest on such legacies shall run from the date of the award: *Provided*, That where a pecuniary legacy is bequeathed to or for the use of the widow of the testator or any child or descendant of the testator, or any person toward whom the testator in his lifetime stood in loco parentis, or for the maintenance of any person, interest shall, unless a contrary intention appear by the will, begin to run from the date of the death of the testator.

SECTION 22. All annuities and all payments of rents, income, interest or dividends of any real or personal property, directed by any will to be made during the lifetime of the beneficiary, or for the life or lives of another person or persons, or for a term of years, shall, like interest on money lent, be considered as accruing from day to day, and shall be apportioned to the date of the death of such beneficiary or of such cestui que vie, or to the end of such terms of years.

SECTION 23. Whenever any person is or shall be entitled to the income from the proceeds of the sale of a decedent's real estate, and whenever any personal property, or the increase, profits or dividends thereof, has been or shall hereafter be bequeathed to any person, for life, or for a term of years, or for any other limited period, or upon a condition or contingency, the executor or executors, administrator with the will annexed, trustee or trustees under such will, or trustee appointed by the orphans' court to make such sale of real estate, as the case may be, shall deliver the property so bequeathed to the person entitled thereto, upon such person giving security in the orphans' court having jurisdiction, in such form and amount as, in the judgment of the court, will sufficiently secure the interest of the person or persons entitled in remainder, whenever the same shall accrue or vest in possession. Should such person or legatee refuse

or neglect or be unable to enter such security, the court may, upon petition of any person interested, including the owner of any subsequent interest, vested or contingent, in such proceeds of real estate, personal property, or the increase, profits or dividends thereof, and upon due notice to all persons interested, so far as such notice can reasonably be given, appoint a suitable person or corporation as trustee to receive and hold such proceeds of sale or personal property, invest the same in securities authorized by law, pay the income thereof, after deducting all legal charges, to the person entitled thereto, and, upon the termination of the trust, account for and pay to the persons entitled thereto the corpus of the trust fund, or transfer and deliver to them the securities in which it is invested, as the court may direct, after deducting all legal charges thereon. Such trustee shall enter such security as the court may direct. He shall not be an insurer of the trust fund, and shall be liable to the persons interested in the income or corpus of the trust fund only for such care, prudence and diligence in the execution of the trust as other trustees are liable for.

SECTION 24. The remedy for the collection or enforcement of payment or delivery of all legacies, whether pecuniary, specific or otherwise, and whether charged on land or not, shall hereafter be exclusively in the orphans' court, saving the jurisdiction of other courts in actions which may be pending at the time of the approval of this act.

SECTION 25 (a) In all cases in which, by the provisions of any last will and testament, or by the provisions of this act, or by proceedings in the orphans' court in any county, any legacy or any money payable at a future period, or any money the interest on which is payable to any person, is or shall be hereafter charged upon, or payable out of real estate, it shall be lawful for the legatee or the person entitled to such money or interest to apply by petition to the orphans' court having jurisdiction of the accounts of the fidu-

ciary. On the presentation of such petition, the court, having caused due notice to be given to such fiduciary, and the devisee or heir, as the case may be, and the present owner, of the real estate charged with such legacy, sum of money or interest, and to such persons interested in the estate or property as justice may require, may proceed according to equity to make a decree directing such devisee, heir or owner to pay the amount of such legacy, sum of money or interest then due, within a time to be limited by such decree, and providing that in case such devisee, heir or owner shall fail to make payment within such time, the fiduciary, or a trustee to be appointed by said court, in its discretion, shall, after giving public notice of such sale, once a week for a period of three weeks before the day appointed therefor, by advertisement, in at least one newspaper published in the county if there be one, or, if there be none, then in an adjoining county, and by hand bills posted at a conspicuous place on the real estate proposed to be sold and in at least three of the most public places in the vicinity of such estate, make sale of said real estate or so much thereof as may be necessary, for the purpose of payment of such legacy, sum of money or interest. The proceeds of such sale shall be distributed, under the direction of said court, as in other cases of judicial sales, to the persons legally entitled to receive the same. In the case of money charged upon real estate, the interest on which is payable to any person, the court may, instead of directing a sale of such real estate as aforesaid, make such decree or order to enforce payment of said interest as shall be just and proper.

(b) If the real estate charged with such legacy, sum of money or interest shall be situated in a county or counties other than that the orphans' court of which has jurisdiction of the accounts of the fiduciary, and the devisee, heir or owner, against whom such decree has been made, shall fail to comply therewith according to the terms thereof, such decree may be certified

to the orphans' court of any county in which such real estate is situated, or, in case such real estate is divided by a county line, then to the orphans' court of the county where the mansion house may be situated, or, if there be no mansion house, to the county where the principal improvements may be, or, if there be no improvements, to either county. Upon such certification and petition filed by the legatee or the person entitled to such money or to such interest, it shall be the duty of the said orphans' court to make an order for the sale of so much and such parts of such real estate as shall, in their opinion, be necessary to raise the specified sum and to direct the fiduciary, or a trustee to be appointed by said court, to make such sale after public notice as aforesaid given in each of the counties in which the real estate is situated. Such fiduciary or trustee shall in all cases make return of his proceedings, in relation to such sale, to the orphans' court making such order of sale, when, if the same be approved by said court, it shall be confirmed; but the proceeds of such sale shall be distributed under the direction of the court having jurisdiction of the accounts of the fiduciary or trustee, as provided in clause (a) of this section. In the case of money charged upon real estate, the interest on which is payable to any person, the orphans' court to which the decree is certified, as aforesaid, may, instead of directing a sale of such real estate as aforesaid, make such decree or order to enforce payment of said interest as shall be just and proper.

(c) Before such legatee or other person shall be entitled to the benefit of any decree made under the provisions of this section for payment by the devisee, heir or owner of the real estate of the amount of such legacy, sum of money or interest, he or she shall give such security as the court, in which application was originally made, shall direct, for the indemnity of the devisee, heir, owner, or other persons interested, in the event of any debt due by the testator being recovered,

for the payment of which such real estate would be liable.

SECTION 26 (a) Whenever any testator shall have heretofore, by his last will and testament duly proven, given or bequeathed any annuity or annuities to any person or persons, or directed the payment of an annuity or annuities by his executors or by trustees, or bequeathed legacies of principal sums payable at a future period, or upon contingencies or under other circumstances by which the payment or discharge and satisfaction of such legacies may be postponed, or may not take place until a distant period after the death of such testator, and either by the express words of the will, or by the rules of law in the construction thereof, such annuities or legacies are made or become a charge upon all the residuary real or personal estate of the testator, and whenever any testator shall hereafter make any such bequest and provisions, in any such case, it shall be lawful for the executors of any such will, or for any such annuitant or legatee, or for any person interested in such residuary estate, at any time after the expiration of six months from the granting of letters testamentary, to apply by petition to the orphans' court having jurisdiction of the accounts of such executors, setting forth the facts and praying relief.

(b) Upon the filing of such petition, the court may order a citation to be issued to the parties interested, to appear at a day certain, to show cause why the relief prayed for should not be granted; and upon the return of such citation, if all the annuitants, legatees and other persons interested shall have had due notice of the application, the court may itself inquire into the circumstances, the amount and condition of the estate, and the expediency and propriety of exempting any part or portion of the residuary real or personal estate from the lien and charge of such annuities and legacies, or either of them, having due regard to the absolute and ultimate security of such annuities and lega-

cies; or the court may, at its discretion, refer the case to a master, with directions to inquire into the matters aforesaid and to report thereupon.

(c) After such inquiry by the court or, if the case is referred to a master, after his report has been made and after notice thereof to all persons interested, it shall be lawful for the court to make a decree in the premises, and if it shall appear that all the debts of the testator have been paid or sufficiently secured, the court may enter a decree that such part or parts of the residuary real estate, or such real securities or investments in public stocks or bonds, or such securities as now are or may hereafter be authorized by law as investments by trustees, shall be set apart or appropriated or that such part of the residuary estate shall be so invested as, in the judgment of the court, shall appear to be, and with reasonable probability continue to be, adequate and sufficient, beyond all charges, expenses and deductions, for the payment of such annuities and legacies, providing always a sufficient surplus to meet any contingent diminution or depreciation in the value or income of the estate and securities so set apart.

(d) When such decree shall have been made, it shall be further lawful for the court to order and decree that all the remaining real or personal estate of the testator, or both, not so specifically set apart, shall be and remain discharged and exonerated from the lien and charge of any and every such annuity and legacy, and such decree shall have the force and effect of discharging and exonerating all such real or personal estate, or both, accordingly: *Provided*, That an appeal from a decree granting or refusing such petition may be taken to the proper appellate court within six months after the entry of the same, as in other cases: *And provided further*, That nothing in this section contained shall be deemed or held to authorize the exoneration of any real estate which may have been or may

be specifically charged by a testator with the payment of any annuity or legacy.

(e) The real estate, securities and investments, set apart and appropriated by order of the court as aforesaid, shall be and continue in the possession, charge and management of the executors, trustees or other persons to whom the same may have been devised or bequeathed by the testator as aforesaid, under and subject to the charge of such annuities and legacies. It shall be the duty of every such executor, trustee and other person, upon request of any person interested, to file with said court, at the expiration of one year after such decree shall have been made, and at the expiration of every year thereafter until the termination of such trust, an account setting forth the situation and circumstances of such estate, securities and investments, and the annual income therefrom, and the payments thereout. If, upon such account, it shall appear to the court that the said income exceeds, in any considerable degree, the amount of the existing annuities and other charges and expenses payable thereout, it shall be lawful for the court to order and decree that such surplus income may be paid over to such persons as may be entitled to the residuary estate under the provisions of the will, or the court may, in their discretion, order and decree that the same be invested in real securities, public stocks or bonds, or such securities as now are or may hereafter be authorized by law as investments by trustees, for the further or additional security of such annuitants or legatees.

(f) Upon the application of any person interested in any residuary estate, set apart as aforesaid, setting forth that, by reason of the decease of any such annuitant, or by the happening of any other event, the charge of any annuity or legacy as aforesaid has become extinguished, in fact or law, it shall be lawful for the said court, from time to time, after due notice and inquiry into the facts, to make an order and decree for

the exoneration and discharge of such part or portion or so much of the real estate, securities and investments, so set apart and appropriated, as may appear to such court to be beyond the amount requisite or proper for the purpose of providing a sufficient continuing security for the payment of the remaining annuities and legacies. Every such order or decree shall have the same force and effect in respect to the real estate, securities and investments, therein and thereby exonerated and discharged, as is declared in clause (d) of this section, in respect to the residuary estate not specifically set apart and appropriated. An appeal from the entry of or refusal to enter such order or decree may be taken to the proper appellate court within six months, as in other cases.

(g) Nothing in this section contained, or in any decree or order made by any orphan's court by the authority of this section, shall be deemed or held to affect in any way the legal or equitable rights of any person or persons interested in the residuary estate set apart and appropriated as aforesaid, but all such rights to the ultimate enjoyment of such estate shall remain and continue as before the passage of this act, so far as the provisions of this section are concerned.

SECTION 27 (a) 1. In all cases in which, under any proceeding in any orphans' court of this Commonwealth, or by any last will and testament, or by the provisions of this act, any dower, legacy, recognizance or other charge shall have been imposed upon land, or any part thereof, and such charge is due and payable, and the person or persons to whom such payment is due cannot be found after diligent and reasonable search, it shall be lawful for the owner of the land charged to apply by petition to the orphans' court of the county where said land is situated, or, in case said land is divided by a county line, to the orphans' court of the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there

be no improvements, in either county, setting forth the circumstances of the case, the name or names of the person or persons to whom such payment is due or the fact that such names are unknown, and the time when such legacy or charge, or any part thereof, became due and payable, and a description of the land subject to the charge. Thereupon said court shall make an order directing such petitioner to give public notice of the fact set forth in such petition, by publication once a week for four successive weeks in one or more newspapers published within or nearest to said county or within or nearest to each of said counties, requiring the person or persons to whom such legacy or charge, or any part thereof, is due and payable, or who wish to lay claim to the moneys as aforesaid, to appear in court on a day designated, not less than twenty days after the last publication of said notice, and show cause why the amount so due and payable, as set forth in said petition, should not be paid into said court.

2. If no person shall appear to show cause, as aforesaid, or if the person or persons appearing shall fail to show that he or they are entitled to such moneys, the court, being satisfied of the truth of the facts set forth in said petition, shall enter a decree that the amount of such legacy or charge, or part thereof, due and payable to the time of final decree, be paid into court, and that, upon such payment, such real estate shall be discharged from the lien of such legacy or charge, or from so much thereof as shall be so paid into court. When the amount of such legacy or other charge does not appear as a matter of record, the court may, by appointment of a master or by investigation in open court, ascertain and fix such amount. A certified copy of such decree may be recorded in the deed book in the office for recording deeds in every county where such real estate or any part thereof is situated, in the same manner and with like effect as deeds of conveyance of real estate are recorded, and shall be

indexed by the recorder in the grantors' index under the name of the decedent and in the grantees' index under the name of the owner of the land; and the charges for recording shall be the same as are provided by law for similar services.

(b) 1. In all cases in which, under any proceeding in any orphans' court of this Commonwealth, or by any last will and testament, or by the provisions of this act, any dower, legacy, recognizance, or other charge shall have been imposed upon land, payable presently or at a future time, and such charge shall have been paid, or a period of twenty years shall have elapsed after the principal of such charge has become due and payable and no payment shall have been made within such period on account of such charge by the owner or owners of the land, and no sufficient satisfaction, release, acquittance or acknowledgment of payment thereof shall be of record in the county in which the land is situated, it shall be lawful for the orphans' court of said county, or, in case said land is divided by a county line, then the orphans' court of the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there be no improvements, in either county, to entertain a petition for the discharge of said land from the lien of said charge.

2. Such petition shall be presented by the owner or owners of said land or any part thereof, shall be duly verified by affidavit, and shall set forth the facts and allege that said charge has been paid or that no payment of principal or interest has been made within said period of twenty years on account of said charge by the present owner or owners, or, so far as can be ascertained, by his or their predecessors in title, and shall state the names of all known parties interested in such charge, their places of residence, if known, and a description of the lands subject to the charge and sought to be released and discharged.

3. Upon the presentation of such petition, it shall be lawful for said court to issue a citation in the manner authorized by law to all such parties, which citation shall be served as other citations are required to be served, and shall require the parties to appear in court on a day designated, to show cause why said land should not be discharged from the lien of such dower, legacy or other charge.

4. If the court, aided if necessary by the report of a master, shall determine, at a hearing held in pursuance of said citation, that such dower, legacy or other charge has been paid or is otherwise no longer chargeable upon the land by reason of any presumption of payment, or if no person shall appear to answer the citation, or if all parties in interest shall have joined in the petition upon which such citation was issued, the court, being satisfied of the truth of the allegations of the petition, shall decree that the land subject to the charge, or any part thereof, sought to be released or discharged, shall be released and discharged from the same and the payment thereof; and a certified copy of such decree may be recorded in the office for recording deeds in each county where such land or any part thereof is situated, upon the terms and with the effect provided in clause (a), paragraph two of this section.

(c) Whenever any dower, legacy, recognizance or other charge has been or shall be charged upon or payable out of real estate, by virtue of any last will and testament, by the provisions of this act, or under any proceeding in any orphans' court of this Commonwealth, or whenever it shall be claimed that such charge exists, it shall be lawful for said court, in any case not provided for by the preceding clauses of this section, on petition of the devisee or heir of such real estate, or any owner thereof, claiming under such devisee or heir, to authorize such petitioner to pay into said court the full amount of such legacy or other charge; whereupon the said court shall make a decree, discharging such real estate from the lien of such

legacy or other charge, or from so much thereof as shall be so paid into court; and a certified copy of such decree may be recorded in the office for recording deeds in any county where such land or any part thereof is situated, upon the terms and with the effect provided in clause (a), paragraph two of this section.

(d) All moneys, when paid into court under the provisions of any of the preceding clauses of this section, shall remain therein until the legatee or other person claiming the same shall present a petition for the distribution thereof, whereupon the court shall, after due notice to all parties interested, make distribution of said moneys to the persons legally entitled to receive the same, or may, in its discretion, appoint an auditor for the purpose of making such distribution.

(e) All costs of proceedings under the provisions of any of the clauses of this section shall be paid as may be directed by the court.

(f) Any party aggrieved by any definitive order or decree entered by the court under any of the provisions of this section may appeal from such order or decree to the proper appellate court as in other cases.

SECTION 28 (a) The executors of the last will of any decedent, to whom is given thereby a naked authority only to sell any real estate, shall take and hold the same interests therein, and have the same power and authorities over such estate for all purposes of sale and conveyance, and also of remedy by entry, by action or otherwise, as if the same had been thereby devised to them to be sold, saving always, to every testator, the right to direct otherwise.

(b) All powers to sell or let real estate on ground-rent, contained in any will, shall be deemed and taken to authorize sales, conveyances or leases, either public or private, unless expressly restricted by the said instrument to one or the other mode.

(c) All powers, authorities and directions, relating to real estate, contained in any last will, and not given to any person by name or by description, shall be

deemed to have been given to the executors thereof; but no such power, authority or direction shall be exercised or carried into effect by them, except under the control and direction of the orphans' court having jurisdiction of their accounts, and after the entry of security if the court shall so direct.

(d) In all cases wherein testators shall have devised their real estate, or any part thereof, to their executors to be sold, or shall have authorized or directed such executors to sell and convey such real estate, or shall have directed such real estate to be sold without naming or declaring who shall sell the same, if one or more of such executors shall die, refuse, renounce, or be dismissed or discharged, it shall be lawful for the surviving, acting or remaining executor or executors, or for the administrator or administrators with the will annexed, if such there be, to bring action for the recovery of possession of such real estate, and against trespassers thereon, to sell and convey such real estate, or manage the same for the benefit of the persons interested therein, and otherwise act respecting the same, as fully and completely as he or they, together with such dying, refusing, renouncing, dismissed or discharged co-executor or co-executors, would be empowered to do, if there had been no death, refusal, renunciation, dismissal or discharge, or, in the case of an administrator with the will annexed, as fully and amply as if all the executors named in the will had joined therein: *Provided*, That nothing in this clause shall be deemed or taken to prevent any testator from directing, by his last will and testament, otherwise than is herein declared and enacted.

SECTION 29. Any fiduciary with power to convey lands or tenements in this Commonwealth, may make conveyance under such power by and through an attorney or attorneys duly constituted, and such conveyances shall be of the same validity as if executed personally by the constituent; and all conveyances so heretofore bona fide made by such fiduciaries are here-

by confirmed: *Provided*, That nothing herein contained shall authorize any fiduciary to delegate to others the discretion vested in himself for the general management of his trust.

SECTION 30. Whenever any person seised of real estate situated in this Commonwealth has died or shall die, having first made and published his last will and testament, wherein said real estate is devised to executors or trustees named therein in trust to make sale thereof, or wherein the sale of real estate is authorized or directed but no person is designated to make such sale, and the executors have complied with the provisions of section twenty-eight, clause (c), of this act, or wherein said executors or trustees are authorized to make sale of said real estate, convert the same into money, and distribute the proceeds of such sale or sales, or any part thereof, or hold the same in trust for any particular purpose, or for the use of any particular person or persons named in said last will and testament, the person or persons purchasing the real estate so sold from the executors or trustees named in said last will and testament, under the power of sale or direction to sell contained therein, shall take title thereto free and discharged of any obligation to see to the application of the purchase money.

SECTION 31. Unless it be otherwise provided by the will, any testamentary trustee shall have power to make a lease of real estate included in the trust for a term not exceeding five years, and any guardian shall have power to make a lease of real estate belonging to his ward for a term not exceeding five years that shall expire before the minor, if living, would attain his majority. If any testamentary trustee or guardian shall deem it advisable to make such lease for a longer period than aforesaid, the orphans' court of the county wherein such real estate shall be situated, on the application of such trustee or guardian, being aided where necessary by the report of a master, may authorize such trustee or guardian to lease such real estate,

on such terms and conditions, at such rental, and for such period, as shall appear just and equitable to said court, with the same force and effect as though said lease were made by the beneficial owner or owners and he or they were sui juris and owned the property in fee. In all cases where such application shall be approved by any orphans' court, the court may direct said trustee or guardian, before making such lease, to file his bond in said court, in such sum as the court shall direct, and with good and sufficient corporate security, or with two good and sufficient individual sureties, approved by said court, conditioned for the faithful application or payment by him of all rents to be received under said lease: *Provided*, That where such trustee or guardian shall be a corporation, duly authorized by law, the court may, in lieu of security as aforesaid, permit such corporation to enter its own bond without surety.

SECTION 32 (a) Whenever, by the provisions of any last will and testament admitted to probate in any county of this Commonwealth, any of the real estate of the testator is ordered or directed to be sold and the proceeds therefrom are bequeathed, or are payable or distributable, in whole or in part, to any minor or minors, or cestuis que trust, and it is the desire of all the legatees and beneficiaries interested in said proceeds to elect to take said real estate, in lieu of the several bequests or legacies or interests, it shall be lawful for the orphans' court having jurisdiction of the accounts of the executor of said will, upon the petition of any fiduciary interested, to authorize and empower said fiduciary, on behalf of his ward or cestui que trust, to enter into an election in writing, to take said real estate or part thereof in fee, in lieu of the legacy or legacies, interest or interests, bequeathed or payable or distributable as aforesaid, taking and being entitled to an estate in said real estate commensurate with the interest said minor or cestui que trust would have had in the fund derived from the sale of said

real estate, if the same had been sold in accordance with the provisions of said will. Such election shall be duly acknowledged and recorded in the deed book in the office of the recorder of deeds for the county in which such real estate is situated, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name of the ward or cestui que trust, the charges for recording to be the same as are provided by law for similar services, and shall then be filed in the office of the clerk of said orphans' court.

(b) Whenever, by the provisions of any last will and testament admitted to probate in any county of this Commonwealth, money is directed to be laid out or invested in real estate, for the use of any minor or minors, or cestui que trust, and it is the desire of all the beneficiaries interested to elect to take said money instead of the real estate, it shall be lawful for the orphans' court having jurisdiction of the accounts of the executor of said will, upon petition of any guardian or trustee interested, to authorize and empower said guardian or trustee, on behalf of his ward or cestui que trust, to enter into an election in writing, which shall be filed in the office of the clerk of said court, to take said money in lieu of the real estate, taking and being entitled to an interest in said money commensurate with the estate said minor or cestui que trust would have had in the real estate if the same had been purchased in accordance with the provisions of said will.

(c) All elections to take real estate in lieu of legacies or interests, or money instead of real estate, heretofore made by any guardian or trustee pursuant to an order of any orphans' court in this Commonwealth, are hereby ratified, confirmed and validated.

SECTION 33 (a) Whenever, in any last will and testament, the testator has directed or shall direct all or any part of his real estate to be appraised and sold, or has devised or shall devise such real estate to any

person or persons at an appraisement to be made, or has given or shall give to any person or persons the right to take such real estate at an appraisement directed by the testator to be made but has not indicated or shall not indicate by whom such appraisement shall be made, it shall be lawful for any of the parties interested in such real estate or in the sum to be paid therefor to apply, by petition, to the orphans' court of the county in which said real estate is situated, or, in case the real estate is divided by a county line, in the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there be no improvements, in either county, setting forth the terms and character of such devise or direction of the testator, and also the names and residences, when known, of all parties interested.

(b) Upon the presentation of such petition, said court shall appoint two or more disinterested and competent persons, citizens of the county, to make such appraisement, unless the testator has designated the number of persons to make such appraisement, in which case, the court shall appoint the number of persons so designated; and the court shall, by general rule or by special order in the particular case, provide for notice to be given to all parties interested of the time and place of making such appraisement.

(c) The appraisers so appointed shall be sworn or affirmed, well and truly and without prejudice or partiality, to value and appraise such real estate; and each of such appraisers shall receive, as compensation for his services, such amount as may be allowed by said court, such compensation to be paid out of the estate of the decedent, as part of the costs of administration.

(d) The appraisement so made shall be returned to the said orphans' court and, if confirmed by said court, shall be conclusive on all the parties interested in said real estate, unless an appeal be taken from such decree

of confirmation to the proper appellate court within six months after the date thereof.

(e) Upon the return and confirmation of such appraisalment, the court shall issue its citation to the person or persons entitled to take such real estate on compliance with the terms of the will, to appear at a time fixed by said court to accept or refuse the same. If, upon the return of such citation, duly served, such person or persons shall appear and accept such real estate at the appraisalment, and shall pay or secure the payment of the amount thereof at such time and upon such terms as shall be fixed by said court, then the court shall adjudge such real estate to such person or persons. If such person or persons shall fail or neglect to appear and accept such real estate at the appraisalment or shall refuse to accept it, or, having accepted, shall fail to pay or secure the amount of such appraisalment as aforesaid, then the court shall adjudge such real estate to the person or persons entitled thereto under the provisions of the will in the event of such real estate not being taken at the appraisalment directed by the testator, or, if the will contains no provision for such event, then the court shall adjudge such real estate to the persons legally entitled thereto. Any such decree may be recorded in the deed book in the office for recording deeds of any county in which such real estate is situated, with the same effect as deeds are recorded, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name or names of the person or persons accepting such real estate at the appraisalment, or of the person or persons entitled thereto in the event of such real estate not being taken at the appraisalment, or of the person or persons legally entitled thereto where the will contains no provision for a failure to take at the appraisalment, as the case may be, and shall be registered in the survey bureau, or with the proper authorities empowered by law to keep a register of real

estate, if any there be, in said county, and the charges for recording and registering shall be the same as are provided by law for similar services.

(f) In all cases of wills, heretofore or hereafter made and duly proved and recorded, wherein the testator has given or shall give the right to one or more persons to take any or all of his real estate at a certain valuation therein named, and has appointed or shall appoint such person or persons as executor or executors, to whom letters testamentary are issued, such person or persons may present his or their petition to the orphans' court of the county in which such real estate is situated, or, in a case where the real estate is divided by a county line, in the county where the mansion house may be situated, or, if there be no mansion house, in the county where the principal improvements may be, or, if there be no improvements, in either county, setting forth the terms and character of such devise or direction, that he or they have been appointed executor or executors of the will, that letters testamentary have been issued to him or them, and formally accepting such real estate at such valuation. Upon the presentation of such petition, the court shall have power to adjudge the real estate to such person or persons, and to decree that he or they shall account for the valuation thereof in the settlement of his or their accounts in the orphans' court having jurisdiction of such accounts.

(g) Whenever any orphans' court shall have heretofore made a decree adjudging real estate to certain persons, in any case mentioned and provided for in clauses (e) and (f) of this section, such decree shall be valid and available to vest in the person or persons to whom such real estate was adjudged, all the right, title and interest of the testator who had died, leaving a will wherein the right to accept such real estate was given.

SECTION 34 (a) Whenever, by any last will and testament, any dwelling-house or other building is devised to any person or persons, without defining the bound-

daries of the curtilage or lot appurtenant to such building and necessary for the use and enjoyment of the same, it shall be lawful for any of the parties interested to apply by petition to the orphans' court of the county in which such building is situate, for the appointment of commissioners to designate the boundaries of the curtilage or lot appurtenant to such building, and necessary for the convenient use of the same, for the purposes for which it was intended.

(b) It shall be the duty of the said court, on presentation of such petition, to appoint two or more disinterested and competent persons, as they shall think proper, for the purposes aforesaid, which persons shall be sworn or affirmed faithfully to perform their duties as commissioners, and shall be respectively entitled to receive from the estate of the testator, for their services as commissioners, such sum as the said court shall deem proper.

(c) It shall be the duty of the commissioners so appointed to give reasonable notice to all parties interested of the time at which they will examine said dwelling-house or other building for the purposes aforesaid, and to make report to the court in pursuance of the order to them directed. In such report, they shall sufficiently designate and describe, by metes and bounds, with their courses and distances, and by draft, if necessary, the limits and extent of ground necessary for the convenient use of such building, for the purposes for which it was intended. If such report shall be approved by the court, a decree of confirmation shall be entered, a certified copy whereof shall be recorded in the deed book in the office for recording deeds of the county in which said building is situate, in like manner as deeds are recorded, and with same effect, and shall be indexed by the recorder in the grantors' index under the name of the decedent, and in the grantees' index under the name of the devisee of such dwelling-house or other building, and shall be registered in the survey bureau, or with the

proper authorities empowered by law to keep a register of real estate, if any there be, in such county, upon payment of fees for such recording and registration at the rates fixed by law for similar services; and the devisee of such building shall take the same estate in the ground thus set apart as is devised to him in the building.

(d) All costs of proceedings under this section, including the fees for recording and registration, shall be paid out of the estate of the testator and shall be considered as part of the costs of administration of the estate.

SECTION 35 (a) No personal action hereafter brought, except actions for slander and for libels, and no action for mesne profits or for trespass to real property, shall abate by reason of the death of the plaintiff or the defendant, but the executor or administrator of the deceased party may be substituted as plaintiff or as defendant, as the case may be, and the suit prosecuted to final judgment and satisfaction.

(b) Executors or administrators shall have power to commence and prosecute all actions for mesne profits or for trespass to real property, and all personal actions which the decedent whom they represent might have commenced and prosecuted, except actions for slander and for libels; and they shall be liable to be sued in any such action, except as aforesaid, which might have been maintained against such decedent if he had lived.

(c) In all actions of ejectment which may be pending at the time of the death of any vendor of real estate, when the object is to enforce the payment of purchase money due and owing upon an agreement of sale of such real estate, it shall and may be lawful for the executors and administrators of the deceased vendor to sustain the same in their own names, to the same extent and in like manner as their testator or intestate, if living, could do.

(d) The executors or administrators of every person who was the proprietor of any rent-charge or other rent or reservation in nature of a rent, in fee or otherwise, as mentioned in section eleven, clause (f), of this act, shall and may have an action for the arrearages of such rent due to the decedent, at the time of his decease, against the person who ought to have paid such rent, or his executors or administrators; or they may distrain therefore upon the lands or tenements which were charged with the payment thereof, and liable to the distress of such decedent, so long as such lands or tenements remain and are in the seisin or possession of the tenant who ought to have paid such rent, or in the possession of any other person claiming the same, from or under the same tenant, by purchase, gift or descent, in like manner as such decedent might have done if he had lived.

(e) The executors or administrators of any tenant for life, who shall die before or on a day on which any rent was reserved or made payable upon any demise or lease of any real estate, which determined on the death of such tenant for life, may have an action to recover from the lessee or under-tenant of such real estate, if such tenant for life die on the day on which the same was made payable, the whole, or, if before the day, a proportion of such rent for the last year, or quarter of a year, or other current period of payment, according to the time elapsed at the decease of such tenant for life as aforesaid.

(f) The executors or administrators of any person who, at the time of his decease, was a party, plaintiff, petitioner, defendant or respondent, in any action or legal or equitable proceeding pending in any court of this Commonwealth, shall have full power, if the cause of action shall by law survive to or against them, to become party thereto and prosecute or defend such suit or proceeding to final judgment or decree, as fully as such decedent might have done if he had lived; and if such party die after judgment, certificate, or de-

cree in his favor, his executors or administrators may proceed to execution thereupon, as such party might have done if he had lived.

(g) The court in which any action or legal or equitable proceeding may be pending at the time of the decease of a party, plaintiff, petitioner, defendant or respondent, shall have power to require, by writ of scire facias, the executors or administrators of such party, within twenty days after the service thereof, to become party to such action or proceeding, or to show cause why they should not be made party thereto, by judgment of the court, and further proceedings be had in such action or proceedings; but in every such case, the executors or administrators, who shall become party as aforesaid, shall be entitled to a reasonable continuance of such action or proceeding, according to the circumstances of the case.

(h) Whenever the executor or administrator of a deceased plaintiff, petitioner, defendant, or respondent, in any action or legal or equitable proceeding pending in any court of this Commonwealth, resides without the jurisdiction of the said court, the writ of scire facias provided by the preceding clauses of this section may be served on such executor or administrator by the sheriff of the county where he is resident, if in the opinion of the proper court such service may be reasonably practicable; but if otherwise, and also where the said executor or administrator resides in some other state of the United States, such service may be made by publication, in one or more public newspapers, as, in the opinion of the court, will be most likely to give notice to the said executors or administrators; the said manner of service herein provided to have the same force and effect as the manner of service provided by the said clauses.

(i) No action or other legal or equitable proceeding, commenced by or against fiduciaries, or in which fiduciaries are parties, shall abate or be otherwise defeated, by reason of the death, dismissal, removal, res-

ignation or renunciation of any one or more of them, nor by reason of the annulling or revoking of the letters or powers granted to them, or any of them; but such suit or proceeding may be prosecuted to final judgment or decree, by or against such other person or persons as may have been joined with them in the administration or trust, or by or against such person or persons as may be their successors therein, in all cases, in like manner as if no such change had occurred or act been done; and in all cases of vacancy in the administration or trust as aforesaid, the successors therein shall be made party to such action or proceeding in the manner provided by clauses (f), (g) and (h) of this section.

(j) The omission of an executor or administrator to plead to any action brought against him in his representative character, that he has fully administered the estate of the decedent, or any other matter relative to the assets, shall not be deemed an admission of assets to satisfy the demand made in such action; also the omission of the plaintiff to reply to any such matter when pleaded, shall not be deemed an admission of the want of assets as aforesaid, nor shall such omission otherwise prejudice either party; and no mispleading, or lack of pleading, by executors or administrators shall make them liable to pay any debt or damages recovered against them in their representative character, beyond the amount of the assets, which, in fact, have come or may come or should have come into their hands.

(k) In any suit now pending or hereafter to be brought in any court of this state, if the plaintiff be dead or shall die during the pendency thereof, and no letters testamentary or of administration have been or shall be taken out in this state within one year after the suggestion of the death of such plaintiff upon the record, it shall not be the duty of the defendant to raise an administrator for the purpose of prosecuting the same, but the court in which such suit is or shall

be pending may, after due service upon the executors named in the will of such plaintiff, if known to defendant, or upon the next of kin of the decedent entitled to administration, of a rule to show cause, enter an order that said suit shall abate, unless, before the return day of such rule, letters testamentary or of administration shall be duly issued.

SECTION 36. The statute of limitations shall begin to run against a debt or demand arising or falling due to the estate of a decedent, after his or her death, from the time such debt or demand shall arise or fall due, as aforesaid, notwithstanding that letters testamentary or letters of administration have not been granted on such estate.

SECTION 37. In all cases where executors, administrators, guardians or trustees shall not reside within the county the orphans' court of which has jurisdiction of their accounts, proceedings may be had and suits may be brought against them by creditors and others interested in the estates, in the counties where such accounts are to be settled, and process may be served on said fiduciaries, in any other county by the sheriff of such other county, who shall be deputized for that purpose by the sheriff of the county in which the process issues, or process may be served upon any surety on the official bonds of such fiduciaries.

SECTION 38. Where one of two or more fiduciaries shall be personally or individually indebted, obligated or liable to the estate which he represents, it shall be lawful for the other fiduciaries, or either of them, to institute an action at law, bill in equity, or other appropriate legal or equitable proceeding, on behalf of the said estate, against such fiduciary, individually, to recover or enforce the said indebtedness, obligation or liability, in the same manner as though such fiduciary were not connected with the said estate: *Provided*, That this shall not in anywise affect the duty or liability of such fiduciary to account therefor in the office of the register of wills or in the orphans' court

in the manner now provided by law, the remedy herein provided being in addition to other remedies, legal or equitable, already existing.

SECTION 39. In all cases where a creditor has appointed or shall appoint his judgment debtor his executor, or where such judgment debtor has been or shall be appointed administrator of the creditor, and the said judgment is a lien on the real estate of such executor or administrator, and the same is bequeathed specifically to a legatee, or generally in the residuary clause of such testator's will, or where any testator or intestate, having a judgment situated as aforesaid, shall have creditors interested in preserving the lien of such judgment, such legatee or creditor or the next of kin of an intestate, interested in such judgment, may suggest his or their interest in the same upon the record thereof, and issue a writ of scire facias against the defendant, to revive the same, and continue the lien thereof, at any time when such proceedings shall be necessary under the laws of this Commonwealth; which judgment, so revived, shall remain for the use of all persons interested therein.

SECTION 40. Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against a minor or the estate of a decedent, or to compromise or settle any question or dispute concerning the validity or construction of any last will and testament or the distribution of any decedent's estate, the orphan's court having jurisdiction of the accounts of the fiduciary shall be authorized and empowered, on petition by such fiduciary, setting forth all the facts and circumstances of such claim or question and proposed compromise or settlement and duly verified by oath or affirmation, and after due notice to all parties interested, and after due consideration, aided, if necessary, by the report of a master, if satisfied that such compromise or settlement will be for the best interests of such minor or of the estate of such decedent, to enter a decree authorizing the same

to be made, which decree shall operate to relieve the fiduciary of responsibility in the premises.

SECTION 41 (a) 1. When a fiduciary shall have in his hands any moneys, the principal or capital whereof is to remain for a time in his possession or under his control, and the interest, profits or income whereof are to be paid away, or to accumulate, or when the income of real estate shall be more than sufficient for the purpose of the trust, such fiduciary may invest such moneys in the stock or public debt of the United States, or in the public debt of this Commonwealth, or in bonds or certificates of debt now created or hereafter to be created and issued according to law by any of the counties, cities, boroughs, townships, or school districts of this Commonwealth, or in mortgages or ground rents in this Commonwealth: *Provided*, That nothing herein contained shall authorize any fiduciary to make any investment contrary to the directions contained in the will of the decedent in regard to the investment of such moneys.

2. When a fiduciary shall have in his hands any moneys, as aforesaid, he may present a petition to the orphans' court having jurisdiction of his accounts, stating the circumstances of the case and the amount or sum of money which he is desirous of investing; whereupon it shall be lawful for the court, upon due proof, aided, if necessary, by the report of a master, to make an order directing the investment of such moneys in real estate in this Commonwealth other than ground-rents, or in the bonds or certificates of debt now created or hereafter to be created and issued according to law by any other state of the United States or by any of the counties or cities of such other state, at such prices, or on such rates of interest and terms of payment respectively, as the court shall think fit: *Provided*, That no such investment shall be directed unless it shall be the opinion of the court that it will be for the advantage of the estate and no change be made in the course of succession by such

investment as regards the heirs or next of kin of the cestui que trust: *And provided further*, That nothing herein contained shall authorize the court to make an order contrary to the directions contained in any will in regard to the investment of such moneys.

3. In case the said moneys shall be invested as set forth in paragraph one of this clause, or conformably to the directions of the court under paragraph two of this clause, the said fiduciary shall be exempted from all liability for loss on the same, in like manner as if such investments had been made in pursuance of directions in the will creating the trust, it being hereby declared that the investments mentioned in this section are legal investments of moneys by fiduciaries.

(b) Any fiduciary required by law, by the order of any orphans' court, or by the provisions of any last will and testament, under or by authority of which such fiduciary is acting, to invest funds within his control in mortgages or other securities, may include, as a part of the lawful expense of executing his trust, a reasonable sum paid to a company, authorized under the laws of this state so to do, for guaranteeing the payment of the principal and interest of such mortgage or other securities, not exceeding one-half of one per centum upon the principal of such mortgage or other securities:

SECTION 42 (a) Fiduciaries may themselves, or jointly with others, organize a corporation to carry on the business of the decedent, whether he die testate or intestate, whether the business was owned solely by him or in partnership with others, if such business be one for which a charter could have been obtained in the lifetime of the decedent, and may contribute all or part of the property of the estate which was invested in the business at the time of the death of the decedent, as capital to such corporation and accept stock in the corporation in lieu thereof.

(b) No such corporation shall be organized without the approval of the orphans' court having jurisdic-

tion of the accounts of such fiduciaries first had and obtained, upon petition filed setting forth all the facts and circumstances and the proposed terms and conditions of the organization. Such notice as shall be prescribed by said court shall be given to all persons having any beneficial interest, vested or contingent, in the estate of the decedent, who are in being at the time of the filing of such petition; and the said court shall approve such organization only after inquiring into the circumstances and the proposed terms and conditions of such organization, aided, if necessary, by the report of a master, and only with the written consent of all persons interested who shall be sui juris, and of the guardians or committees of such as shall be under age or non compos mentis.

(c) The stock of any such corporation issued to such fiduciaries shall be held by them for the same uses, trusts and persons as the estate and property were held before the organization of such corporation; they shall have the same right and power to vote such stock, subject to the same control by the court, as prescribed by section forty-three of this act regarding shares of stock belonging to the decedent; and they shall have the right to sell such stock under the direction of the court.

SECTION 43. Fiduciaries, whether appointed by last will and testament or by decree of the orphans' court, shall have the same right and power, either in person or by proxy, at all corporate meetings, to vote any and all shares of stock, held by them in a fiduciary capacity, in any corporation organized under the laws of this Commonwealth, as the deceased, or legal owner thereof had in his lifetime. And where such stock is registered on the books of such corporation in the name of, or has passed by operation of law or by virtue of any last will and testament to more than two fiduciaries, and dispute shall arise among them, the said shares of stock shall be voted by a majority of such fiduciaries, and in such manner and for such pur-

pose as such majority shall authorize, direct or desire the same to be voted. If the number of fiduciaries shall be even and they shall be equally divided upon the question of voting such stock, it shall be lawful for the orphans' court having jurisdiction of their accounts, upon petition filed by any of such fiduciaries or by any party in interest, to direct the voting of such stock in the manner which, in the opinion of said court, will be for the best interests of the parties beneficially interested in the stock.

SECTION 44 (a) No executor or administrator shall be liable to pay interest but for the surplusage of the estate remaining in his hands or power when his accounts are or ought to be filed: *Provided*, That nothing herein contained shall be construed to exempt an executor or administrator from liability to pay interest, where he may have made use of the funds of the estate for his own purposes.

(b) The amount of interest to be paid in all cases by fiduciaries shall be determined by the orphans' court, under all the circumstances of the case, but shall not, in any instance, exceed the legal rate of interest for the time being.

SECTION 45. In all cases where the same person shall, under a will, fulfill the duties of executor and trustee, it shall not be lawful for such person to receive or charge more than one commission upon any sum of money coming into or passing through his hands, or held by him for the benefit of other parties; and such single commission shall be deemed a full compensation for his services in the double capacity of executor and trustee: *Provided*, That any such trustee shall be allowed to retain a reasonable commission on the income he may receive from any estate held by him in trust as aforesaid.

SECTION 46 (a) It shall be the duty of every executor and administrator to file in the register's office a just account of the administration of the estate at the expiration of six months from the time of administra-

tion granted or when thereunto required by the orphans' court, and any executor or administrator may be cited to file his account, after the expiration of six months from the date of issuance of letters testamentary or of administration, on petition of any person having an interest, present or future, vested or contingent, in the estate of the decedent, or on petition of any creditor of the decedent.

(b) The several orphans' courts of this Commonwealth shall have power, by general rule or special order, to appoint one or more examiners to make periodical or special examinations of the assets of estates in the hands of fiduciaries, and power to require all persons in whose custody or control such assets may be held, to present them for such examination. The examiners so appointed shall be compensated by reasonable fees to be fixed by the court and to be paid out of the respective estates.

(c) The several orphans' courts of this Commonwealth shall by general rule provide that any person who, claiming to be interested in the estate of any decedent as creditor, legatee, next of kin or otherwise, has given written notice of his claim to the executor, administrator or trustee, or his attorney, shall be entitled to receive actual notice from said executor, administrator or trustee, or his attorney, of the filing of his account; or such rule of court may provide for the filing of such claims with, and the giving of notice by, the register of wills or the clerk of the orphans' court.

(d) Every register, with whom an account has been or shall be filed, shall transmit the same to the orphans' court of the respective county, at its next stated meeting, being not less than thirty days distant from the time of such filing, of all which he shall give notice to all persons concerned, in the following manner, namely: by an advertisement enumerating all the accounts to be presented at any one time to the said court, in at least two secular newspapers, if there be two, published in the respective county, or if there be

but one newspaper published in such county, then in that one, or if there be none, then in one printed nearest to the said county, at least once a week during the four weeks immediately preceding the meeting of the court at which such account shall be presented, setting forth, in substance, that the accountants, naming them and the character in which they respectively act, have filed their accounts in the office of the said register, and that the same will be presented to the orphans' court for confirmation, at a certain time and place, mentioning the same; and also by setting up conspicuously in his office, and in at least six other of the most public places in the county, at least four weeks before the time appointed for the presentation of such accounts as aforesaid, fairly written or printed copies of such advertisement. The actual expenses of such advertisement, according to the usual rates of advertising in such newspaper, and the setting up of such notices, shall be divided among all the accounts presented at the same court, and the proper portion only shall be charged in any of the said accounts, and allowed to the register as the cost of such advertisement and notices.

(e) When any of the heirs, legatees, distributees or creditors of a decedent reside out of this state, or out of the United States, or from other circumstances it may be expedient that additional or further notice should be given of the settlement of the account of a fiduciary, or of the disposition of the assets or surplusage of the estate, it shall be in the discretion of the orphans' court to require such further or additional notice to be given by such accountant, as they may think proper, to appear in court, or before the auditor or auditors by them appointed as the case may be, at such times as shall be fixed for the examination of such account, or for the distribution of the assets or the surplusage of the estate.

(f) No account of an executor, administrator or guardian shall be confirmed and allowed by the or-

phans' court, unless it shall appear, at the presentation of such account, that notice of such presentation has been given, conformably to the directions of this act.

(g) All trustees who are subject to the jurisdiction of the orphans' court shall file their accounts in the court appointing them or, in the case of testamentary trustees, in the orphans' court of the county where the will is or shall be probated. The orphans' court shall have exclusive jurisdiction of the accounts of all trustees appointed by such court, and of all testamentary trustees, whether such trusts are vested in executors or administrators *virtute officii* or in trustees named in the will, saving, however, the jurisdiction of the courts of common pleas under existing laws in cases of trustees who have filed their accounts in such courts before the approval of this act, and cases of substituted testamentary trustees appointed by any court of common pleas before the approval of this act.

(h) All trustees who are subject to the jurisdiction of the orphans' court may hereafter, triennially, from the date of their appointment, file their accounts in said court, which accounts shall be duly audited, and confirmed absolutely to that date. This clause shall apply to and permit all such trustees, who have been acting in such capacity for more than three years before the passage of this act, to file their accounts, which shall be audited and confirmed absolutely to the date of such filing, and, in like manner, to file their accounts triennially thereafter.

(i) Due notice of the filing of any account of a trustee in the orphans' court of any county shall be given by advertisement as prescribed by rule of said court, and in such other manner as the said court may, in each particular case, direct, to all persons interested in the estate; and absolute confirmation of such account shall not be entered unless all such persons interested are legally competent and qualified, either

personally or by their guardians or committees, to appear in court and object to said account if they so desire.

SECTION 47 (a) The judges of the orphans' courts of this Commonwealth, respectively, shall have power, and are hereby authorized, to establish, in their discretion, such rules and regulations as they may deem proper for the publication of advertisements of notices of the auditing of accounts of fiduciaries and shall have supervision of and regulate the cost of such publication in all such cases, as well by special order in particular cases, as by general rules.

(b) In any county in which a separate orphans' court shall be established, all accounts filed in the office of the register of wills, or in the orphans' court by fiduciaries, shall be examined and audited by the court, without expense to the parties, except where all parties in interest in a pending proceeding shall nominate an auditor, whom the court may, in its discretion, appoint.

(c) In any county in which a separate orphans' court shall not be established, all accounts filed in the office of the register of wills or in the orphans' court by fiduciaries shall be examined by the court, and, if not excepted to, shall after due consideration, be confirmed. If any person interested in the estate shall except to the account, or any of the parties shall desire to refer the account to an auditor, the court shall decide whether the matter calls for such reference; and if so, the court may appoint a suitable person as auditor. The auditor so appointed shall be sworn or affirmed to perform his duties with fidelity, and shall have power to administer oaths or affirmations to parties and witnesses in the matter referred to him.

SECTION 48. Within five years after the final decree, confirming the original or supplementary account of any fiduciary, which has been or may be hereafter passed, upon petition of review being presented by such fiduciary or his legal representatives, or by any

person interested therein, alleging errors in such account, or in any adjudication of the orphans' court or any report of an auditor on such account, which errors shall be specifically set forth in said petition of review, said petition and errors being verified by oath or affirmation, the orphans' court shall grant a rehearing of so much of said account, adjudication, or auditor's report, as is alleged to be error in said petition of review, and give such relief as equity and justice may require, by reference to auditors, or otherwise, with like right of appeal to the proper appellate court as in other cases: *Provided*, That this act shall not extend to any cause when the balance found due shall have been actually paid and discharged by any fiduciary.

SECTION 49 (a) No executor or administrator shall be compelled to make distribution of the estate of his testator or intestate until six months be fully expired from the granting of the letters testamentary or of administration in the estate. After the expiration of said period, distribution may be ordered by the orphans' court having jurisdiction of the accounts of the executor or administrator, on petition of any person having an interest in the assets to be distributed, or on petition of any creditor of the decedent.

(b) Executors or administrators may make distribution, and pay or deliver legacies, without the audit of their accounts, upon such security as may be satisfactory to them, nevertheless at their own risk, but without liability to any creditors of the decedent who shall not have given written notice to the executor or administrator within six months after the granting of letters testamentary or of administration, provided that such executor or administrator has complied with the provisions of section ten of this act. Where distribution of a decedent's estate is awarded by the orphans' court, after audit and confirmation of any account of the executors or administrators, such decree of distribution shall protect the executors or admin-

istrators from personal liability with respect to the property so distributed. In making distribution under such a decree, the executors or administrators shall not be entitled to demand refunding bonds from the distributees, except in the cases specially provided for by this act, and in other cases in which the court shall direct the giving of refunding bonds.

(c) When the personal estate of a decedent does not exceed the value of three hundred dollars, the executor or administrator may, after the expiration of one year after the date of granting the letters testamentary or of administration, present his petition to the proper orphans' court, with an annexed account showing the administration and legal distribution of the estate, the statements in the petition and the account to be verified by the affidavit of such executor or administrator. Thereupon the court may, upon satisfactory proof or acknowledgment of notice to all parties known to be interested in said estate that said petition and account have been presented, order, at the end of thirty days from the date of filing the petition and account, the discharge of the executor or administrator and his sureties from future liability, without the expense of proceedings as in a formal account, unless during said period of thirty days exceptions be filed to the account.

(d) No creditor of a decedent who shall neglect or refuse to present his claim at the audit of the account of the executor or administrator, held not less than six months after the grant of letters testamentary or of administration of which public notice has been given as provided in section ten of this act, or at an audit held after actual notice to such creditor of the filing of such account, as provided in section forty-six, clause (c) of this act, shall be entitled to receive any share of the assets distributed in pursuance of such audit, whether the estate of the decedent be solvent or insolvent.

(e) 1. Whenever it shall appear at the audit and distribution of an estate in the orphans' court, that the balance, after payment of debts, includes stocks, bonds, or other securities, which, for reasons satisfactory to said court, have not been converted by the accountants, it shall be lawful for said court to direct distribution of such assets in kind to and among those lawfully entitled thereto, including fiduciaries.

2. Where stocks, bonds, or other securities have been distributed in kind, as above provided, to any fiduciary, it shall be the duty of such fiduciary to use reasonable diligence in converting such securities as shall not be investments now or hereafter authorized by law; and if such fiduciary be doubtful as to the propriety of making sale of such securities, he may apply to the orphans' court having jurisdiction of his accounts, by petition, for authority and direction to sell the same; whereupon, after due notice to all parties interested, the said court shall make such order in the premises as to it may appear proper.

(f) It shall be lawful for any employer in this Commonwealth at any time not less than thirty days after the death of his employee to pay all wages due to such deceased employee to the wife, children, father or mother, sister or brother (preference being given in the order named) of the deceased employee, without requiring letters testamentary or of administration to be issued upon the estate of said deceased employee, where such wages due do not exceed seventy-five dollars in amount. If such deceased employee shall not leave a wife or any of said relatives surviving him, then it shall be lawful for the employer in like manner to pay such wages to the creditors of the decedent, as follows: undertaker, physician, boarding-house keeper, and nurse, each his or her pro rata share, upon affidavit of fact furnished. The payment of such wages as aforesaid shall be a full discharge and release to the employer from any further claim for such wages.

SECTION 50 (a) Where any fiduciary has been required, or hereafter shall be required, upon the receipt of money, to give a refunding bond, it shall be lawful for such fiduciary, upon paying over such money to creditors, or to parties beneficially interested, to require, under the direction of the orphans' court having jurisdiction of his accounts, a bond, refunding receipt or other obligation from each person receiving such money, to indemnify such fiduciary to the amount such person may receive.

(b) In all cases where refunding bonds shall be given upon the distribution of the estate of any decedent, no action or suit thereon shall be brought after the expiration of six years from the date of such bond: *Provided*, That where the creditors or other persons entitled to the protection of said bonds, shall be within the age of twenty-one years, non compos mentis, imprisoned, or from or without the United States of America, or where a creditor whose debt shall not mature within such period, shall file within the said period in the office of the clerk of the orphans' court where said distribution shall have been made, a copy or particular statement of any bond, covenant, debt or demand upon which his claim arises, then and in any such cases an action may be brought by the creditor at any time not exceeding two years from the coming of age, or removal of such disability of the creditor or other person entitled to the protection of said bonds, or the maturing of the debt or demand aforesaid.

SECTION 51 (a) It shall be the duty of the prothonotaries of the courts of common pleas to file and docket, whenever the same shall be furnished by any parties interested, certified transcripts or extracts from the record showing the amount appearing to be due from, or in the hands of any fiduciary, on the settlement of his accounts in the orphans' court of the same or any other county, or by virtue of a decree of said court, which transcripts or extracts, so filed, shall constitute judgments, which shall be liens against the

real estate of such fiduciary from the time of such entry until payment, distribution or satisfaction. Executions may be issued thereon out of said court of common pleas against the real estate only of such fiduciary, by any person or persons interested, for the recovery of so much as may be due to them respectively. The liens of such judgments shall cease at the expiration of five years from the time of the entry aforesaid, unless revived by scire facias in the manner by law directed in the cases of judgments in the courts of common law.

In case of an appeal from the orphans' court, the judgment shall be for no more than the amount finally decreed by the appellate court to be due, and it shall be the duty of the prothonotary of the common pleas, on such decree of the appellate court being certified to him, to enter on his docket the amount so found due and decreed by the appellate court. If such amount be greater than that decreed by the orphans' court, the judgment for such excess shall take effect only from the time of entering the decree of the appellate court; but if the amount be reduced by the final decree of the appellate court, the prothonotary shall reduce the amount originally entered on his judgment docket and index accordingly; and such final decree, upon appeal, being certified and filed in said court of common pleas, the said term of five years shall be counted from the time of such entry.

(b) When the fiduciary shall have fully paid and discharged the amount of such judgment, the parties who have received payment shall acknowledge satisfaction thereof, on the record of the court of common pleas. In case of neglect or refusal so to do, for the space of thirty days after request in writing and tender of all the costs, the orphans' court, on due proof to them made that the entire amount due from such fiduciary, according to the final settlement of the said account, has been fully paid and discharged, may make an order for his relief from such recorded judg-

ment, which order, being certified to the court of common pleas, shall be entered on their records, and shall operate as a full satisfaction and discharge of such judgment.

SECTION 52 (a) Any fiduciary whose accounts shall have been settled and confirmed and who shall have paid and transferred the remainder of the property in his hands to his successor in the administration or trust, if any, or to the persons legally entitled thereto, may, on petition, be discharged by the orphans' court having jurisdiction of his accounts from the duties of his appointment; and his sureties may be discharged from future liability with respect thereto: *Provided*, That in every case of the petition of a guardian for his discharge during the minority of his ward, it shall be the duty of the court to appoint some suitable person to appear and act for the ward in respect thereto.

(b) Whenever one or more of several joint fiduciaries shall die or be discharged or removed by the proper orphans' court, the said court, upon the application of any party interested, shall have power to discharge from future liability said discharged or deceased fiduciary and his surety or sureties, and require new or additional security of the remaining fiduciary or fiduciaries, with a like result in case of failure to comply as is provided by this act when new or additional security is, for any cause, required by such court: *Provided*, That such discharge shall not affect liabilities existing at the time of the discharge of such fiduciary or fiduciaries, surety or sureties.

SECTION 53 (a) Any orphans' court having jurisdiction of the accounts of executors, administrators, guardians or trustees shall have exclusive power to remove such executor or administrator and vacate the letters testamentary or of administration or to remove such guardian or trustee, as the circumstances of the case may require, in any of the following cases:

1. When such fiduciary is wasting or mismanaging the estate or property under his charge, or is likely to prove insolvent, or has neglected or refused to exhibit true and perfect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge;

2. When such fiduciary has been duly declared a lunatic, habitual drunkard or weak-minded person;

3. When such fiduciary has become incompetent to discharge the duties of his trust, by reason of sickness or physical or mental incapacity, and it shall appear to the satisfaction of the court that such incompetency is likely to continue, to the injury of the estate under his control;

4. When such fiduciary has removed from this state, or has ceased to have any known place of residence therein, during the period of one year or more;

5. When any guardian, whether testamentary or otherwise, mismanages the minor's estate or misconducts himself in respect to the maintenance, education or moral interests of the minor;

6. When such fiduciary fails or neglects to pay over the principal or income of the estate, according to his duty under the trust, or fails or neglects to comply with any order or direction of the court made in relation to said trust;

7. When any trustee of property held in trust under the provisions of any last will and testament for religious, educational or charitable purposes, or for use as a burying-ground, neglects or abuses such trust;

8. When, for any reason, the interests of the estate or property are likely to be jeopardized by the continuance of any such fiduciary.

9. When all the cestuis que trust, or a majority of them, having the life estate under any trust, shall desire the removal of the trustee or trustees upon any substantial ground not hereinbefore enumerated, and the court, upon petition filed by them or any of them,

shall be satisfied that such substantial ground for removal exists, in which case, the court may remove said trustee or trustees and appoint another or others as chosen by said parties.

Provided, however, That nothing herein contained shall be construed to affect the jurisdiction of any court of common pleas in proceedings pending at the date of the approval of this act.

(b) Whenever it shall be made to appear to the orphans' court having jurisdiction of the accounts of any fiduciary, on the oath or affirmation of any person interested, that there exists any one or more of the grounds for removal of such fiduciary enumerated in the last preceding clause of this section, such court may issue a citation to such fiduciary, requiring him to appear on a day certain, to answer the charge so preferred, and may make all such necessary rules and orders as the said court may deem proper for bringing the matter complained of to a hearing. If, on such hearing, the said court shall be satisfied of the truth of the matters charged, it may remove such executor or administrator and vacate the letters testamentary or of administration or remove such guardian or trustee, as aforesaid, and direct the issuance of new letters testamentary or of administration, or appoint a new guardian or trustee, and make such orders for the security of the trust property and for the delivery of such property and the books, accounts, papers and moneys belonging or relating to the trust to the successor of such fiduciary as the circumstances of the case may require.

(c) Any orphans' court having jurisdiction of the accounts of any fiduciary shall have power in a case of emergency, when the exigencies of the case shall appear to the satisfaction of the court to require it, in order that the rights of creditors and parties interested in the assets of the estate shall be protected, summarily to remove such executor or administrator and vacate the letters testamentary or of administra-

tion or summarily to remove such guardian or trustee, on any of the grounds enumerated in clause (a) of this section, and to direct the issuance of new letters or to appoint a successor to such guardian or trustee, on the ex parte petition of any creditor or party interested in the estate, and further to make such orders for the security of the trust property and for the delivery of such property and the books, accounts, papers and moneys belonging or relating to the trust to the successor of such fiduciary as the circumstances of the case may require: *Provided*, That it shall be lawful for any such fiduciary, so removed, to apply by petition to said court to have such decree of removal vacated and to be reinstated in his office.

(d) No decree removing one of several co-fiduciaries shall suspend the power or prejudice the acts of any of the other fiduciaries.

(e) If such superseded fiduciary shall neglect or refuse to comply with any order or decree of the court made under the provisions of this section, the court shall have power to enforce obedience thereto by attachment, with or without sequestration, execution or otherwise, as to such court shall seem necessary and proper for the due protection of the rights and interests of any and all parties interested; or the succeeding fiduciary may proceed at law against the superseded fiduciary and his sureties, if any there be, or against any other person who may be possessed of any goods or chattels belonging to the estate of the decedent or minor, as the case may be, or be indebted to him; or the remedies by execution and suit at law may be pursued at the same time, if the case so require, until the end be fully attained.

SECTION 54 (a) 1. In any of the cases enumerated in section fifty-three, clause (a) of this act, the court may, upon the return of the citation, require such security of an executor, or such other and further security of an administrator, guardian or trustee, as they may think reasonable, conditioned for the performance of

the trust, which security shall be taken in the name of the Commonwealth of Pennsylvania and filed in the said court, and shall be deemed and considered in trust for the benefit of all persons interested in such estate: *Provided*, That if it shall be made to appear to the said court that such fiduciary is about to remove from his Commonwealth, or that the property under his charge may be wasted or materially injured before he can be reached by the ordinary process of the court, it shall be lawful for such court to issue a writ of attachment, under which the same proceedings may take place as in other cases of attachment on mesne process in the orphans' court; and on the return of such attachment, the court may proceed as on the return to the citation.

2. If such fiduciary shall neglect or refuse to give such security, or such further security, so ordered, then the said court may remove such executor or administrator and vacate such letters testamentary or of administration, or remove such guardian or trustee, and direct the issuance of new letters or appoint a new guardian or trustee as aforesaid.

(b) Application may be made to the orphans' court, in any of the cases mentioned in clause (a) of section fifty-three of this act, by any surety on the bond of such fiduciary, and upon the petition of such surety duly verified by oath or affirmation, the like proceedings may be had, for the purpose of compelling such fiduciary to give security, and thereupon the court may order such fiduciary to give such counter-securities as they shall judge necessary to indemnify the surety against loss by reason of his suretyship. If such fiduciary shall refuse or fail to give such security, within such reasonable time as the court shall order, it shall be lawful for the court to direct such fiduciary to pay or deliver over forthwith to such surety, or to some other person for him, all of the property, moneys, books, accounts and papers whatsoever for which such surety may be accountable or

which may belong or relate to the trust: *Provided*, That such surety shall first give to the satisfaction of the court, sufficient security, faithfully to preserve and account therefor, and deliver and dispose of the same according to the order of the court.

(c) It shall be lawful for the orphans' court having jurisdiction of the accounts of any fiduciary, on the petition of any surety of such fiduciary, or of the personal representatives of a deceased surety, to issue a citation requiring such fiduciary, at the return thereof, not less than thirty days' notice to be given of the presentation of such petition, to file an account of his management of the trust or estate. The said citation, upon such petition, and affidavit filed of the facts connected with the execution and position of the trust funds or estate, shall further direct the said fiduciary to show cause why the petitioner or his estate should not be discharged from all future liability, if the court, after due notice to all parties interested, deem it reasonable and proper. If the court, on due consideration, shall discharge such surety or his estate, the fiduciary shall thereupon give a new bond, with surety or sureties, as the court shall order, and on failure or refusal so to do, within such time as is ordered by the court, shall be removed from the trust, and some other person or corporation appointed. When a new bond is required under the provisions of this clause the surety in the prior bond or his estate shall be liable for all breaches of the conditions thereof committed before the new bond is approved according to law.

SECTION 55. In case any surety or sureties, or the personal representatives of any deceased surety or sureties upon the bond of any fiduciary, or any person interested in the trust, shall apply to the fiduciary for a complete and detailed statement of the nature and character of the securities in which the trust funds are invested, and the said fiduciary shall fail for the space of ten days to furnish such statement, or if,

such statement having been furnished, it shall appear to the said surety or sureties, or the representatives of said surety or sureties, or other person interested in said trust, that the funds in the hands of the said fiduciary are badly invested so as to be likely to result in a loss to the trust, the said surety or sureties, or the representatives of said surety or sureties, or other person interested in the trust, may present a petition to the orphans' court having jurisdiction of said trust, praying that an order be made requiring the said fiduciary to file an account of the administration of his trust, which account shall include a complete and detailed statement of the manner and securities in which said trust funds are invested, within twenty days after the service of said order, unless the time be enlarged by the court. Thereupon the said court shall make such order, and if, upon the audit of such account, it shall appear to the court that the said fiduciary has been guilty of any act of fraud or mismanagement or has invested the trust funds in securities not authorized by law or by the will of the testator, or has made investments which are likely to cause a loss to the trust, said court may remove the said fiduciary and order payment of the assets to his successor or into court.

SECTION 56 (*a*) Whenever, by the provisions of any last will and testament admitted to probate, a trust has been or shall be declared of and concerning any real or personal estate, to be executed by a trustee or trustees named in said will or by the executor or executors of said will, whether by virtue of their office or otherwise, and any of the said executors or trustees shall die, renounce, resign, be dismissed from or refuse to act in the said trust, leaving the other executor or executors, trustee or trustees, continuing therein, it shall be lawful for the orphans' court having jurisdiction of the accounts of such executors or trustees, on the application of any party in interest, and with the consent of such continuing executor or

executors, trustee or trustees, with notice to all persons interested, so far as such notice can reasonably be given, to appoint a trustee or trustees in the place of the executor or executors, trustee or trustees, so dying, renouncing, resigning, dismissed or refusing to act, and to require the person or persons so appointed to enter sufficient security for the faithful performance of the trust. The trustee or trustees so appointed shall have the same power and interest over and in the property in trust, as the executor or executors, trustee or trustees, in whose stead he or they shall be so appointed as aforesaid. It shall also be lawful for the said court to appoint a successor or successors to such trustee or trustees from time to time, whenever from death, resignation or otherwise, the same shall be necessary or expedient.

(b) Whenever, in any of the cases enumerated in clause (a) of this section, all of the said executors or trustees shall die, renounce, resign, be dismissed from or refuse to act in the said trust, it shall be lawful for the orphans' court having jurisdiction of the accounts of such executors or trustees, on the application of any party interested, and with notice to all persons interested, so far as such notice can reasonably be given, to appoint a trustee or trustees, so dying, renouncing, resigning, dismissed or refusing to act, and to require the person or persons so appointed to enter sufficient security for the faithful performance of the trust. The trustee or trustees so appointed shall have the same power and interest over and in the property in trust, as the executor or executors, trustee or trustees in whose stead he or they shall be so appointed as aforesaid. It shall also be lawful for the said court to appoint a successor or successors to such trustee or trustees from time to time, whenever from death, resignation or otherwise, the same shall be necessary or expedient.

(c) In all cases of trusts created by will, and annexed to the office of executor, such executor may

decline to accept the trust, or be discharged therefrom, without affecting his office of executor, and the orphans' court of the proper county shall have power to fill the vacancy by appointment; and if a trust fund or estate is committed to an executor or other trustee, in which several cestuis que trust have or are entitled to enjoy a separate interest, and a vacancy should in any manner occur in the office of the trustee thereof, the said court may appoint one or more trustees of such estate or fund, for each of the said cestuis que trust, on his or her application; and the said trustee give security as in other cases.

(d) The jurisdiction of proceedings under the provisions of this section shall be exclusively in the proper orphans' court: *Provided, however,* That nothing herein contained shall be construed to affect the jurisdiction of any court of common pleas in proceedings pending at the date of the approval of this act.

SECTION 57 (a) Any fiduciary appointed by any orphans' court of this commonwealth, or by virtue of any last will and testament, probated within this Commonwealth, may, if resident within this Commonwealth, lawfully execute the duties of his trust, whether or not he is a resident of the county in which the trust was created, or in which the decedent had his domicile. The court having jurisdiction may, in its discretion, appoint or refuse to appoint as trustee or guardian any person who is not a resident of this Commonwealth, or a corporation of any state of the United States of America, other than Pennsylvania, duly authorized by its charter or by law to act as such fiduciary, and shall require in all cases of a non-resident of this Commonwealth, or of such corporation, a bond, with sufficient sureties, conditioned for the faithful discharge of the duties of the trust; but the court may, in its discretion, permit such corporation to give its own bond without sureties. Every appointment by will of a trustee or guardian who is a

non-resident of this Commonwealth shall be subject to the approval of such court and the court may require the entry of such bond. No such appointment shall be made of, nor shall letters testamentary be issued to, a corporation of another state, unless such corporation shall first file with the clerk of said court or with the register of wills, as the case may be, an appointment in writing of an attorney-in-fact, resident within the respective county upon whom service of process and notices may be made.

(b) When the trustee or trustees of any estate shall reside out of this Commonwealth, and any part of the trust estate, property or fund is situated within this state, the proper orphans' court may, on the petition of any of the parties interested in said trust property, appoint one or more trustees resident within this Commonwealth, to act in conjunction with said non-resident trustee or trustees in the management and disposition of said trust; and the said court shall have the same power over said trustee or trustees so appointed that it has in other cases of trust.

SECTION 58 (a) Except as hereinafter provided, no letters testamentary or of administration, or otherwise, which may be granted out of this Commonwealth, purporting to authorize any person to intermeddle with the estate of a decedent, shall confer upon such person any of the powers and authorities possessed by an executor or administrator under letters granted within this state; nor, except as hereinafter provided, shall any appointment of a trustee of a decedent's estate or any part thereof by will probated out of this Commonwealth, or by any court out of this Commonwealth, confer upon such person any of the powers and authorities possessed by a trustee under a will probated within this state or appointed by an orphans' court of this state.

(b) Except as hereinafter provided, no appointment of a guardian, made or granted by any authority out of this state, shall authorize the person

so appointed to interfere with the estate, or control the person of a minor in this state: *Provided*, That such foreign guardian may, at the discretion of the orphans' court having jurisdiction, be appointed by said court, on giving security for the due performance of his trust.

(c) It shall be lawful for any executor, administrator, trustee, or other person duly authorized to take charge or possession of the personal estate of any decedent, or for any guardian or other legal representative of the estate of a minor, acting under letters testamentary or of administration, or other authority, granted by or under the laws of any other state, territory or possession of the United States of America, or of any foreign country, to assign and transfer, and to receive the dividends or interest of, any public debt or loan of the Commonwealth of Pennsylvania, or of any county, city, borough, township or school district thereof, or any stocks or bonds of any corporation incorporated under the laws of this Commonwealth, standing in the name of, or belonging to, the decedent, minor or cestui que trust, or any mortgage debt or indenture of mortgage held by, or belonging to, the decedent, minor or cestui que trust, upon real estate situate within this Commonwealth, and to enter or cause to be entered satisfaction upon the record of such indenture of mortgage. Before any such act shall be done by any such executor, administrator, trustee, guardian or other person, there shall be filed in the office of the register of wills for the county in which is located the office for the transfer of such loans, stocks or bonds, or, in the case of a mortgage, of the county where the mortgaged real estate may be situated, when such person is acting under letters or other authority granted by or under the laws of any other state, territory or possession of the United States of America, a copy of the will, probate and letters issued thereon, or of such other grant of authority, duly authenticated in

accordance with the Acts of Congress; or, when such person is acting under letters or other authority granted by or under the laws of any foreign country, a copy of such will, probate and letters issued thereon, or of such other grant of authority, certified by the official custodian of such documents or records, under his official seal if any, to be a true and correct copy of the originals thereof in his possession or under his control, together with the certificate of the presiding judge or the officer having jurisdiction or authority over such custodian that the attestation is in due form and by the proper officer: *Provided*, That before any such executor, administrator or trustee shall assign or transfer any such loans, stocks, bonds or mortgages, or receive any interest or dividends thereon, or enter satisfaction of any such mortgage, he shall also file, with said register of wills, an affidavit stating that the said decedent is not indebted to any person in this Commonwealth, and that the proposed transfer, assignment, receipt or entry of satisfaction is not made for the purpose of removing any of the assets of said decedent beyond the reach of any of the creditors in this Commonwealth; and any such transfer, assignment, receipt or entry of satisfaction without first making and filing such affidavit, shall be void.

(d) Whenever a citizen of the United States, non-resident in the Commonwealth of Pennsylvania, shall have died owning real estate in this Commonwealth, and by his last will and testament shall have empowered his executor or trustee to sell and convey his real estate, it shall be lawful for said executor or trustee, or his duly appointed successor, although not a resident in this Commonwealth, from and after the expiration of one year from the death of such decedent, to execute any power of sale contained in said last will and testament, and to sell and convey to the purchaser the whole or any part of such real estate located in this Commonwealth: *Provided*, That before executing

the power of sale, a copy of the last will, probate and letters testamentary, and of the decree appointing such successor, if any there be, duly authenticated as provided in clause (c) of this section, shall be filed in the office of the register of wills of the county where the land is situated: *Provided further*, That nothing in this clause shall change or modify the acts of Assembly relating to collateral inheritances.

(e) It shall be lawful for foreign executors or administrators to cause to be issued, in their names as such executors or administrators, writs of scire facias within this Commonwealth, on all judgments in favor of their decedents, the lien of which judgments is about expiring: *Provided*, That before any further proceedings are had, letters testamentary or of administration must be granted within this Commonwealth, as provided by law.

(f) It shall be lawful for the orphans' court having jurisdiction of the accounts of any fiduciary to award personal property to the foreign executor or administrator of a deceased non-resident creditor, legatee or distributee, when it shall appear to the satisfaction of the court, by affidavit, or other evidence, that there are no creditors of such non-resident decedent within this Commonwealth, and when it shall further appear by certificate of the register of wills, surrogate or court of the proper jurisdiction, duly authenticated as required by the Acts of Congress, if the domicile of such non-resident creditor, legatee or distributee was in another state, territory or possession of the United States of America, or by the proper diplomatic or consular officer appointed by the United States of America, under his official seal, if such domicile was in a foreign country, that the person claiming to receive such award is authorized under the laws of such state, territory, possession or country to receive the property of his decedent: *Provided*, That the benefits of this clause shall not extend to any case in which it shall appear that the rights of any resident of this

Commonwealth may be adversely affected by such transfer of property to such foreign executor or administrator.

(g) 1. In all cases where any guardian and his ward, or trustee and his cestui que trust, or committee and his lunatic, or any other fiduciary and the person in whose interest he is acting, shall both be non-residents of this state, and such ward or cestui que trust shall be entitled to money, personal property of any description or the proceeds of any sale of real estate in this state, under the control or jurisdiction of any orphans' court, and such guardian, trustee or other fiduciary shall produce satisfactory proof to said court, by certificates, that he has given bond and security, with special reference to the money or personal property to be removed, in the state or country in which he and his ward or cestui que trust reside, in double the amount of such money or of the value of such property, as guardian, trustee or other fiduciary, and it shall be found that a removal of the property will not conflict with the terms or limitations attending the right by which the ward or cestui que trust owns the same, and that no right of any resident of this Commonwealth will be prejudiced by such removal, then any such guardian, trustee or other fiduciary may demand or sue for and remove any such money or property to the place of residence of himself and his ward or cestui que trust. If such guardian, trustee or other fiduciary and his ward or cestui que trust reside in another state, territory or possession of the United States of America, such certificate shall be authenticated as required by the Acts of Congress, and, if they reside in a foreign country, shall be made by the court having jurisdiction of such guardian, trustee or other fiduciary, and authenticated by and under the official seal of a diplomatic or consular officer appointed by the United States of America and residing in such country: *Provided*, That if it shall appear by such certificate that, under the laws of such state, territory, pos-

session or foreign country, such guardian, trustee or other fiduciary, is not required to enter security, but that the interests of his ward or cestui que trust are safeguarded by a deposit of the money or property in the court having proper jurisdiction, then it shall be lawful for the orphans' court of the proper county in this state to cause suitable orders to be made authorizing the delivering and passing over of such money or property to such court without the entry of security.

2. When such non-resident guardian or trustee shall produce an exemplification under the seal of the office, if there be a seal, of the proper court in the state or country of his residence, containing all the entries on record in relation to his appointment and giving bond, and authenticated as required by the Acts of Congress, or by a diplomatic or consular officer appointed by the United States of America, as provided in paragraph one of this clause, the orphans' court of the proper county in this state may cause suitable orders to be made, discharging any resident fiduciary and authorizing the delivering and passing over of such personal property, and also requiring receipts to be passed and filed, if deemed advisable; *Provided*, That in all cases thirty days' notice shall be given to the resident fiduciary, if such there be, of the intended application for the order of removal; and the court may reject the application and refuse such order whenever it is satisfied that it is for the interest of the ward or cestui que trust that such removal shall not take place, or that the claims of residents of this Commonwealth are not fully protected.

(h) When all the persons for whose benefit a valid trust shall have been created by will, for a term of years or for life, shall have removed from this state into any other state, territory or possession of the United States, to reside permanently therein, the orphans' court having jurisdiction of such trust is hereby authorized and empowered, on application by or on

behalf of all the persons interested in the trust, to direct the trustee or trustees appointed in and by said will, to pay over said trust moneys, or transfer the securities in which they may have been invested, to a trustee or trustees duly appointed by the court of such other state, territory or possession, upon the production to said court of satisfactory proof, by certificates, of the appointment of such trustee or trustees in the other state, territory or possession, the authority of such trustee or trustees to receive such moneys or securities, and the entry of bond and security or proof of the fact that under the laws of such state, territory or possession security is not required, such certificates to be authenticated in the manner provided in clause (g), paragraph one of this section, and upon the production of satisfactory proof that the removal of the property will not conflict with the terms or limitations attending the rights which the cestuis que trust have in such money or securities.

SECTION 59 (a) The orphans' court of each county shall have the care of the persons of minors resident within said county, and of their estates, and shall have power to admit such minors, over the age of fourteen, when and as often as there shall be occasion, to make choice of guardians, and to appoint guardians for such as are under the age of fourteen or otherwise incompetent to make choice for themselves. Such appointment or admission of a guardian by the orphans' court of the county in which the minor resides, shall have the like effect in every other county in this Commonwealth, as in that by the orphans' court of which he shall have been so admitted or appointed.

(b) Persons of the same religious persuasion as the parents of the minors shall, in all cases, be preferred by the court, in their appointment as guardians of the persons of such minors.

(c) No executor, administrator or trustee shall be admitted or appointed, by the orphans' court, guardian of a minor having an interest in the estate under

the care of such fiduciary: *Provided*, That nothing herein contained shall be construed to extend to the case of a testamentary guardian.

(d) The orphans' court shall not appoint the father or the mother of a minor as guardian of the estate of said minor: *Provided*, That nothing herein contained shall be construed to extend to the case of a testamentary guardian: *And provided further*, That where the estate of the minor shall be of the value of one hundred dollars or less, the court may, in its discretion, authorize payment or delivery thereof to the natural guardian of the minor or the person by whom the minor is maintained, without the appointment of a guardian by the court or the entry of security.

(e) The orphans' court of each county shall have power to appoint guardians of the estates of minors residing out of the Commonwealth, in all cases where such minors are possessed of estates lying within the jurisdiction of said court, upon the petition of the minors, if over the age of fourteen, and if it be reasonably practicable for such minors to present their own petitions, and in other cases on the petition of persons qualified to act as their next friends, without requiring the said minors to appear in court to make choice of such guardians.

(f) The orphans' court of each county shall have power to appoint guardians of the persons and estates of minors, residents of such county, who may be absent in the service of the United States or who may be physically unable to appear and choose for themselves, or who may be so distant from the seat of justice of the county as to make it unnecessarily expensive for them to appear, upon the petition of the minors, if over the age of fourteen, and if it be reasonably practicable for such minors to present their own petitions, and in other cases on the petitions of persons qualified to act as their next friends, without requiring the said minors to appear in court to make

choice of such guardians: *Provided*, That when the appointment shall be made on petition of a next friend, the minor, if of the age of fourteen or on attaining that age, may subsequently appear and choose his guardian.

(g) The orphans' court having jurisdiction, whenever they may deem it proper, may require a bond, with good and sufficient corporate security, or with two good and sufficient individual sureties, from every guardian of a minor, whether admitted or appointed by the court, or appointed by will, or, in the case of a corporation duly authorized by its charter or by law to act as guardian, said court may permit such corporation to give its own bond without surety. Guardians' bonds shall be filed in the office of the clerk of the court, and be considered in trust for all persons interested; the bonds shall be taken to the Commonwealth in such penalties as the court shall direct and the condition shall be in the following form:

The condition of this obligation is such, that if the above-bounden A. B., guardian of C. D., a minor child of E. F., (late of _____, deceased,) shall, at least once in every three years, and at any other time when required by the orphans' court for the county of _____, render a just and true account of the management of the property and estate of the said minor, under his care, and shall also deliver up the said property, agreeably to the order and decree of the said court, or the directions of law, and shall, in all respects, faithfully perform the duties of guardian of the said C. D., then the above obligation shall be void, otherwise it shall be and remain in full force and virtue.

Provided, That nothing in this act contained shall be construed to deprive a minor of any action or remedy to which he may be entitled at the common law, against his guardian for any cause whatever.

(h) Every guardian shall, within thirty days after any property of his ward shall have come into his

hands or possession, or into the hands and possession of any person for him, file in the office of the clerk of the court a just and true inventory and statement, on oath or affirmation, of all such property or estate.

(i) When any one shall die, leaving an infant child or children, without having made an adequate provision for the support and education of such child or children, during their minority, the orphans' court may direct a suitable periodical allowance, out of the minor's estate, for the support and education of such minor, according to the circumstances of each case; which order may, from time to time, be varied by the court, according to the age of the minor and the circumstances of the case.

(j) 1. Every guardian, whether required by the court to give security or not, shall, at least once in every three years, and at any other time when so required by the court, render an account of the management of the minor's property under his care, which accounts shall be filed in the office of the clerk of the orphans' court, for the information of the court and the inspection of all parties concerned.

2. After the filing of such account or accounts, such guardian, or any person qualified to act as next friend of the minor, may petition the orphans' court of the respective county for leave to have said account or accounts examined or audited and confirmed, with the same force and effect as executors', administrators' and trustees' accounts are examined or audited and confirmed.

3. Such petition shall set forth the reason why such account or accounts should be examined or audited and confirmed, and shall contain full information as to who may be next of kin or nearest relative of age to such minor or minors, and all others interested in the minor's estate, together with their addresses if it is possible to give them.

4. The court may thereupon direct to whom, and what, notice, if any, shall be given to such next of kin,

or nearest relative of age, or the parties interested in said minor's estate, including the minor or minors if fourteen years of age or over, of the filing of said account or accounts and presentation of said petition.

5. After the filing of due proof of the service of said notice, if any be required by the court, the court may, if it be satisfied that any reasonable necessity exists for the examination or audit and confirmation of such account or accounts, asked by said petition, thereupon appoint some suitable person to act as guardian ad litem for the minor or minors interested in said account or accounts; and the same shall be thoroughly examined by said guardian ad litem, who shall make report to the court of the result of his examination; or the court may examine and audit said account itself; and, after said examination or audit is completed, a final decree of confirmation as to the matters contained in said account or accounts, and said report or reports, and said audit or audits, shall be made by the court, which decree of confirmation shall be final and conclusive as to matters contained in said accounts, reports or audits and decrees, with the same force and effect as such decrees now have in respect to the accounts of executors, administrators and trustees and the audits thereof.

6. The costs of said audits or examinations, including a fee for said guardian ad litem to be fixed by the court, shall be allowed as part of the administration expenses, and be paid by such guardians out of the property of the ward in their hands, and allowed as credits in said decrees or the said costs shall, in the discretion of the court, be paid by the said guardians personally.

7. Appeals from such decrees, and rehearings of such accounts shall be allowed, in the same manner and form, and with the same force and effect, as are allowed in the similar cases of other fiduciaries.

8. Every such guardian, unless previously discharged or removed, shall, on the arrival of his ward

at full age, file in the register's office a full and complete account of his management of the minor's property under his care, including all the matters embraced in each partial account, except where an examination or audit, and final decree of confirmation, has taken place, as hereinbefore provided, in which case said final account shall include only such matters as were not included in such former accounts and decrees aforesaid. And the decree of the orphans' court upon such final account shall, like other decrees of the court, be conclusive upon all parties, unless reversed, modified or altered on appeal.

(*k*) In all cases in which proceedings may be had in any orphans' court, affecting the interest of a minor, notice of such proceedings shall be given to the guardian of such minor in the same manner as is provided by law in the case of persons of full age. If such minor has no guardian appointed by an orphans' court of this Commonwealth, or by will probated within this Commonwealth, the orphans' court in which such proceedings shall be pending shall appoint a guardian ad litem for such minor in the same manner as is provided by this act in the case of ordinary applications for the appointment of guardians. If such minor or his next friend shall fail or refuse to apply for the appointment of a guardian ad litem, as aforesaid, then such guardian shall be appointed by said court on petition filed by any person interested in such proceedings. Notice shall be served, as aforesaid, upon such guardian ad litem whenever notice shall be requisite.

SECTION 60 (*a*) Whenever it shall be made known to the orphans' court of the county in which shall be found all or the greater portion of the estate, within this Commonwealth, of any person who has been a resident either of this Commonwealth or of any other state, territory, or possession of the United States, or of any foreign country, and who has absented himself from his usual place of abode, by the petition,

verified by affidavit, of the husband, wife or next of kin of such person, or other persons interested, in the order named, such petition being supported by the affidavits of at least two disinterested residents of the city, borough, township, or other territorial subdivision where such person was last known to reside, that such person has been absent from his usual place of abode for the space of one year, that his whereabouts is not and has not been known for the space of one year, and he has left an estate, either real or personal, or both, situated, owing or belonging to him, within this Commonwealth without any person to take charge of or manage the same, it shall be lawful for said court to appoint one or more trustees who shall take charge of and manage the estate of such person, so being absent, and who shall be under the control and direction of said court.

(b) Such trustee or trustees, before taking charge of such estate, shall give bond in twice the amount of the personal property, and seven years' rental of real estate, with sufficient corporate security or two sufficient individual sureties, to be approved by said court, for the faithful discharge of his or their duties, and shall, within thirty days after his or their appointment, file an inventory of said estate, and render an account at least once in three years, or oftener if required by said court; *Provided*, That in the case of a corporation duly authorized by its charter or by law to act as such trustee, said court may permit such corporation to give its own bond without surety.

(c) If such person so being absent shall return before the expiration of seven years from the time when he was last heard of, or before letters testamentary or of administration shall have been issued in his estate on the ground of his presumed death, or, in case such letters shall have been so issued, before the said trustee or trustees shall have paid or delivered over the property or estate to the executors or administrators so appointed, then said trustee or trustees shall

render an account and restore to such person the property and estate after deducting the reasonable expenses of said trust and compensation of said trustee or trustees. If such absent person shall die within such period of seven years, and letters testamentary or of administration shall be duly issued in his estate, or if, after the expiration of said period of seven years, letters testamentary or of administration shall be issued in his estate on the ground of his presumed death, then said trustee or trustees shall render an account and pay and deliver over to the executors or administrators of such person the property and estate after deducting expenses and compensation as aforesaid.

SECTION 61. No immaterial variation from the forms given and prescribed in and by this act, shall vitiate or render void any proceedings in which said forms shall be used.

SECTION 62. This act shall be known and may be cited as the Fiduciaries Act of 1917.

SECTION 63. The following acts and parts of acts of assembly are hereby repealed as respectively indicated. The repeal of the first section of an act shall not repeal the enacting clause.

An act entitled "An Act directing the order of payment of debts of persons deceased," passed January 12, 1705-6, 2 Statutes at Large, 198, Chapter 134, absolutely.

Sections 2 to 7 inclusive, and 10 to 13 inclusive, of an act entitled "An Act for establishing orphans' courts," passed March 27, 1713, 1 Sm. L. 81, absolutely.

An act entitled "An Act for the more easy recovery of legacies," passed March 21, 1772, 1 Sm. L. 383, absolutely.

Section 5 of an act entitled "An Act for prevention of frauds and perjuries," passed March 21, 1772, 1 Sm. L. 389, absolutely.

An act entitled "An Act for continuing an act, entitled 'An Act for the more easy recovery of legacies,' " passed October 9, 1779, 1 Sm. L. 473, absolutely.

Section 8 of an act entitled "An Act to establish the judicial courts of this Commonwealth, in conformity to the alterations and amendments in the constitution," passed April 13, 1791, 3 Sm. L. 28, absolutely.

An act entitled "An Act to enable executors and administrators, by leave of court, to convey lands and tenements contracted for with their decedents, and for other purposes therein mentioned," passed March 31, 1792, 3 Sm. L. 66, absolutely.

Sections 1, 2, and 14 to 21 inclusive of an act entitled "An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned," passed April 19, 1794, 3 Sm. L. 143, absolutely.

Sections 1 to 4 inclusive, and 9, of an act entitled "An Act supplementary to the act, entitled 'An Act directing the descent of intestates real estates, and distribution of their personal estates, and for other purposes therein mentioned,' " passed April 4, 1797, 3 Sm. L. 296, absolutely.

An act entitled "An Act declaring the power and authority given by any last will and testament to executors to sell and convey real estates, to be and remain in the survivors or survivor of them, unless otherwise expressed in the will of the testator, and for other purposes therein mentioned," passed March 12, 1800, 3 Sm. L. 433, absolutely.

An act entitled "An Act authorizing executors and administrators, in certain cases, to convey lands sold by their decedents by order of orphans' court," approved April 2, 1802, P. L. 133, absolutely.

An act entitled "A supplement to the act entitled, 'An Act to enable executors and administrators, by leave of court, to convey lands and tenements contract-

ed for with their decedents, and for other purposes therein mentioned,' " approved March 12, 1804, P. L. 271, absolutely.

Section 3 of an act entitled "An Act to amend certain parts of an act, entitled 'An Act supplementary to the several acts of this Commonwealth, concerning partitions and for other purposes therein mentioned,' " approved March 26, 1808, P. L. 144, absolutely.

Section 2 of an act entitled "An Act relative to dower, and for other purposes," approved April 1, 1811, P. L. 198, absolutely.

An act entitled "A supplement to the act entitled, 'An Act declaring the power and authority given by any last will and testament to executors to sell and convey real estates, to be and remain in the survivors the will of the testator, and for other purposes therein or survivor of them, unless otherwise expressed in absolutely.

An act entitled, "An Act to compel trustees to account in certain cases, and for other purposes," approved February 17, 1818, P. L. 104, in so far as it relates to testamentary trustees.

An Act entitled, "A further supplement to the act entitled 'An Act to enable executors and administrators by leave of the court to convey lands and tenements contracted for with their decedents, and for other purposes,' " approved March 10, 1818, P. L. 183, absolutely.

Section 7 of an act entitled, "An Act to compel assignees to settle their accounts, and for other purposes," approved March 24, 1818, P. L. 285, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

Section 2 of an act entitled "An Act to limit the time of appeal in cases of divorce, and of the settlement of the accounts of guardians, executors and administrators," approved February 8, 1819, P. L. 58, absolutely.

Section 2 of an act entitled "A further supplement to an act, entitled 'An Act to enable the executors and administrators by leave of court, to convey lands and tenements contracted for with their decedents, and for other purposes therein mentioned,' passed the thirty-first of March, one thousand seven hundred and ninety-two," approved February 5, 1821, P. L. 25, absolutely.

An act entitled "An Act relative to guardians of minor children," approved March 30, 1821, P. L. 153, absolutely.

Section 2 of an act entitled, "An Act to encourage domestic industry, and promote the comfort of the poor," approved March 31, 1821, P. L. 178, absolutely.

An act entitled "A further supplement to the act entitled, 'An Act directing the descent of intestates' real estates and distribution of their personal estates, and for other purposes therein mentioned,'" approved April 1, 1823, P. L. 286, absolutely.

Section 1 of an act entitled "An Act to enable executors, administrators, guardians, and other trustees, to invest their trust moneys," approved February 18, 1824, P. L. 25, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act to prevent the failure of trusts," approved March 22, 1825, P. L. 107, in so far as it relates to testamentary trustees.

Section 1 of an act entitled "A supplement to the intestate law of this Commonwealth," approved April 8, 1826, P. L. 255, absolutely.

Section 3 of an act entitled "An Act for the relief of the poor," approved April 10, 1828, P. L. 285, absolutely.

Sections 1 and 2 of an act entitled "An Act to prevent the failure of trusts, to provide for the settlement of accounts of trustees and for other purposes," approved April 14, 1828, P. L. 453, in so far as they relate to testamentary trustees.

Sections 1 and 2 of an act entitled "An Act concerning executors," approved April 3, 1829, P. L. 122, absolutely.

An act entitled "A further supplement to the act directing the descent of intestates' real estates and distribution of their personal estates, and for other purposes therein mentioned, passed the nineteenth day of April, seventeen hundred and ninety-four," approved April 7, 1830, P. L. 347, absolutely.

Sections 6, 14, 15, 16, 18 to 24 inclusive, 26 to 30 inclusive, 43 and 44 of an act entitled "An Act relating to registers and registers' courts," approved March 15, 1832, P. L. 135, absolutely.

Sections 5 to 34 inclusive, 47, 53 and 54 of an act entitled "An Act relating to orphans' courts," approved March 29, 1832, P. L. 190, absolutely.

Sections 1 to 41 inclusive, 43, 45 to 61 inclusive, 66, 67 and 68 of an act entitled "An Act relating to executors and administrators," approved February 24, 1834, P. L. 73, absolutely.

Sections 1 and 3 of an act entitled "Supplement to the act passed the twenty-ninth day of March, Anno Domini, one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' courts,' " approved April 14, 1835, P. L. 275, absolutely.

Sections 12 and 13 of an act entitled "A supplement to the act entitled 'An Act to establish the district court for the city and county of Philadelphia,' passed the twenty-eighth day of March, one thousand eight hundred and thirty-five," approved March 11, 1836, P. L. 76, in so far as they relate to testamentary trustees.

Sections 15 to 21 inclusive and 23 to 26 inclusive of an act entitled "An Act relating to assignees for the benefit of creditors, and other trustees," approved June 14, 1836, P. L. 628, in so far as they relate to testamentary trustees.

Section 3 of an act entitled "An Act supplementary to the various acts relating to orphans' and registers

courts, and executors and administrators, and the act relating to the measurement of grain, salt, and coal," approved June 16, 1836, P. L. 682, absolutely.

Section 2 of an act entitled "An Act to empower the court of common pleas for the city and county of Philadelphia to appoint assignees or trustees in the place of the deceased assignees or trustees of John Vaughan, and for other purposes," approved March 17, 1838, P. L. 80, in so far as it relates to the orphans' court.

Sections 1 and 2 of an act entitled "A further supplement to an act, entitled 'An Act relating to orphans' courts,' passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, and the supplement thereto, passed the fourteenth of April, one thousand eight hundred and thirty-five, and for other purposes," approved April 13, 1840, P. L. 319, absolutely.

Section 1 of an act entitled "An Act relating to orphans' courts, and for other purposes," approved October 13, 1840, P. L. (1841) 1, absolutely.

Section 5 of an act entitled "A further supplement to the act entitled 'An Act to establish the district court of the city and county of Philadelphia,' passed the twenty-eighth day of March, one thousand eight hundred and thirty-five, and for other purposes," approved March 12, 1842, P. L. 66, absolutely.

Section 52 of an act entitled "An Act concerning the trust estate of Hugh Roberts, deceased, and for other purposes," approved July 16, 1842, P. L. 374, absolutely.

Section 22 of an act entitled "An Act to authorize the governor to incorporate the Delaware Canal Company, and for other purposes," approved April 13, 1843, P. L. 237, absolutely.

Section 9 of an act entitled "An Act in regard to certain entries in ledgers in the city of Pittsburgh, and relating to the publishing of sheriffs' sales, and for

other purposes," approved April 22, 1846, P. L. 476, absolutely.

Section 1 of an act entitled "An Act relative to the appointment of trustees by orphans' court, and for other purposes," approved April 22, 1846, P. L. 483, absolutely.

An act entitled "An Act to enable the executors and administrators of decedents to perfect title to real estate in certain cases," approved February 8, 1848, P. L. 27, absolutely.

Section 9 of an act entitled "A supplement to an act, entitled 'An Act relative to the LeRaysville Phalanx,' passed March, Anno Domini one thousand eight hundred and forty-seven, and relative to obligors and obligees, to secure the right of married women, in relation to defalcation, and to extend the boundaries of the borough of Ligioner," approved April 11, 1848, P. L. 536, in so far as it relates to letters of administration.

An act entitled "An Act relative to sales made by persons acting in a fiduciary capacity," approved March 14, 1849, P. L. 164, in so far as it relates to powers to sell or let real estate on ground rent, contained in any will or testamentary writing.

Section 2 of an act entitled "A further supplement to an act, entitled 'An act authorizing the Governor to incorporate the Mill Creek and Mine Hill navigation and railroad company,' passed the seventh day of February, Anno Domini, one thousand eight hundred and twenty-eight; and in relation to orphans' court deeds," approved April 9, 1849, P. L. 511, absolutely.

Sections 5, 13 and 16 of an act entitled "A supplement to an act relative to the venders of mineral waters; and an act relative to the Washington Coal Company; to sheriffs' sales of real estate; to the substitution of executors and trustees when plaintiffs; to partition in the courts of common pleas, and for other

purposes," approved April 9, 1849. P. L. 524, absolutely.

Section 2 of an act entitled "An Act relative to sheriffs' sales, and to the appointment of trustees in the county of Philadelphia, and to the appointment of trustees; incorporating the First Presbyterian Church of Pottstown, Montgomery county, and changing the venue of a certain suit in Huntingdon county," approved April 10, 1849, P. L. 597, absolutely.

Section 1 of an act entitled "An Act relating to conveyances by trustees," approved March 14, 1850, P. L. 195, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

Sections 1, 5 and 44 of an act entitled "An Act relating to the bail of executrixes; to partition in the orphans' court and common pleas; to colored convicts in Philadelphia; to the limitation of actions against corporations; to actions enforcing the payment of ground rent; to trustees of married women; to appeals from awards of arbitrators by corporations; to hawkers and pedlers in the counties of Butler and Union; to the payment of costs in actions by informers in certain cases; to taxing lands situate in different townships; and in relation to fees of county treasurers of Lycoming, Clinton and Schuylkill; to provide for recording the accounts of executors, administrators, guardians and auditors' reports; and to amend and alter existing laws relative to the administration of justice in this Commonwealth," became a law April 25, 1850, by reason of the Governor's failure to return it within ten days, P. L. 569, absolutely.

Sections 22 and 23 of an act entitled "An Act to incorporate the Wyoming County Mutual Insurance Company; relating to Library street, in the city of Philadelphia; giving jurisdiction to the court of common pleas in Tioga county, in a certain divorce case; and relating to paving in front of the prison in the county of Philadelphia," approved April 26, 1850, P.

L. 577, except in so far as they relate to recognizances in partition, and section 25 of said act, absolutely.

Section 8 of an act entitled "An act relative to the Columbia Lyceum and Mechanics' Institute; to the act relating to inspections; to the claims of David King, of Venango county; and of the heirs of John Bennet, of Lycoming county, deceased; to authorize James T. Crabb to sell certain gun-powder in the county of Philadelphia; relative to the estate of Francis Harley, senior, deceased; and a supplement to an act relating to registers and registers' courts, passed March fifteenth, one thousand eight hundred and thirty-two," approved May 15, 1850, P. L. 764, absolutely.

Section 6 of an act entitled "An Act supplementary to an act passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, entitled 'An act relating to orphans' courts,' and relating to contracts of decedents and escheats in certain cases, and relative to the district court of the city and county of Philadelphia, and to registers of wills," approved April 3, 1851, P. L. 305, absolutely.

Section 5 of an act entitled "An Act relating to the commencement of actions to judgments and decrees for the payment of money to the widows and children of decedents, to partitions in the common pleas, relative to penalties on telegraph operators, to pleadings in certain actions of debt, to actions of ejectments, to the protection of fences, to partnerships, to limitations of writs of entry in manors, lands, and tenements, to the exemption laws, to reports of the Supreme Court, to appeals relating to wards, boroughs, and township officers, to the acknowledgments of deeds and sequestration of life estates," approved April 14, 1851, P. L. 612, absolutely.

Section 18 of an act entitled "An Act to incorporate a company to erect a bridge over the river Schuylkill at Spring Mill, in Montgomery county, relative to the nineteenth section of 'An Act regulating certain election districts, et cetera,' approved March twenty-ninth,

eighteen hundred and fifty-one, to school directors in Philadelphia county, to actions for damages sustained by injuries done to the person by negligence or default, relative to the accounts of John Humes, deceased, to authorize the trustees of the Seventh Presbyterian Church of Philadelphia to convey certain real estate, to security for moneys loaned by wives to husbands, to unpaid school taxes in Bradford county, and relative to service of process on agents of joint stock companies," approved April 15, 1851, P. L. 669, absolutely.

An act entitled "A supplement to an act relating to executors and administrators, passed February twenty-fourth, one thousand eight hundred and thirty-four," approved February 2, 1853, P. L. 31, absolutely.

An act entitled "An Act to give power to the orphans' court to grant relief in certain cases," approved February 23, 1853, P. L. 98, absolutely.

Section 1 of an act entitled "An Act relative to bringing suits by creditors and others against executors, administrators, assignees and other trustees in certain cases, and serving notices and for satisfaction of mortgages, and opening judgments in certain cases," approved March 27, 1854, P. L. 214, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

Section 2 of an act entitled "A supplement to an act, entitled 'An Act relating to the sale and conveyance of real estate,'" approved April 13, 1854, P. L. 368, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "A supplement to the act relating to executors and administrators," approved May 5, 1854, P. L. 570, absolutely.

Sections 2 to 5 inclusive of an act entitled "A supplement to an act relating to assignees for the benefit of creditors and other trustees," approved May 3,

1855, P. L. 415, in so far as they relate to testamentary trustees.

Section 4 of an act entitled "An Act relating to the rights of property of husband and wife," approved April 11, 1856, P. L. 315, absolutely.

An act entitled "An Act respecting the estates of non-resident wards," approved April 21, 1856, P. L. 495, absolutely.

Section 8 of an act entitled "An Act for the greater certainty of title and more secure enjoyments of real estate," approved April 22, 1856, P. L. 532, absolutely.

An act entitled "An Act relating to testamentary trustees," approved March 13, 1859, P. L. 611, absolutely.

Section 1 of an act entitled "An Act relative to orphans' courts," approved March 22, 1859, P. L. 207, absolutely.

An act entitled "A supplement to the act, entitled 'An Act relating to executors and administrators,' approved the twenty-fourth day of February, Anno Domini, one thousand eight hundred and thirty-four," approved April 6, 1859, P. L. 384, absolutely.

An act entitled "An Act to extend the jurisdiction of the orphans' courts in case of testamentary trusts," approved April 7, 1859, P. L. 406, absolutely.

An act entitled "An Act relative to the exemption of three hundred dollars, and to the widows and children of decedents," approved April 8, 1859, P. L. 425, in so far as it relates to the exemption allowed to the widow or children of any decedent.

An act entitled "An Act relating to executors, administrators and guardians," approved April 13, 1859, P. L. 604, absolutely.

An act entitled "An Act relative to the lien of legacies," approved May 1, 1861, P. L. 420, absolutely.

An act entitled "An Act authorizing surviving executors and administrators to execute and deliver deeds of conveyance in certain cases," approved May

1, 1861, P. L. 431, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act relating to executors and other trustees," approved May 1, 1861, P. L. 680, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act regulating certain charges of executors and trustees," approved March 17, 1864, P. L. 53, absolutely.

An act entitled "An Act extending the provisions of the second section of the act of April tenth, one thousand eight hundred and forty-nine, entitled 'An Act relative to sheriffs' sales, and the appointment of trustees, in the county of Philadelphia, et cetera,' to the several counties of this Commonwealth," approved April 23, 1864, P. L. 550, absolutely.

An act entitled "An Act relating to the appointment of guardians," approved August 25, 1864, P. L. 1029, absolutely.

An act entitled "An Act providing additional remedies against trustees of a trust created for life, or during marriage, and providing a remedy for the protection of their sureties," approved March 27, 1865, P. L. 44, in so far as it relates to testamentary trustees.

An act entitled "An Act supplementary to the act to set apart, for the use of the widow, or children, of a decedent, three hundred dollars of the estate of said decedent, approved April fourteenth, one thousand eight hundred and fifty-one," approved November 27, 1865, P. L. (1866) 1227, absolutely.

An act entitled "Supplement to an act, entitled 'An Act providing additional remedies against trustees of a trust, created for life, or during marriage, and providing a remedy for the protection of their sureties,' approved March twenty-seventh, one thousand eight hundred and sixty-five," approved April 17, 1866, P. L. 111, in so far as it relates to trustees subject to the jurisdiction of the orphans' court.

An Act entitled "An Act enlarging the powers of the orphans' court, so as to discharge liens on real estate," approved May 17, 1866, P. L. 1096, absolutely.

An act entitled "A supplement to the act of the fifteenth of March, Anno Domini one thousand eight hundred and thirty-two, entitled 'An Act relating to registers and registers' courts,'" approved April 15, 1867, P. L. 86, absolutely.

An act entitled "An Act to authorize the court of common pleas and orphans' court of the city of Philadelphia to appoint and remove trustees," approved April 9, 1868, P. L. 785, in so far as it relates to trustees subject to the jurisdiction of the orphans' court.

An act entitled "An Act relating to orphans' courts, conferring upon said courts power to define boundaries in certain cases of devises and conveyances for life or terms of years," approved April 14, 1868, P. L. 97, absolutely.

Section 1 of an act entitled "An Act relating to the appointment of auditors in the courts of the county of Montgomery," approved February 18, 1869, P. L. 183, absolutely.

An act entitled "An Act relative to actions of trespass and for mesne profits," approved April 12, 1869, P. L. 27, absolutely.

An act entitled "An Act for the protection of contingent interests," approved April 17, 1869, P. L. 70, absolutely.

An act entitled "An Act relating to the appraisement of real estate devised by any last will and testament within this Commonwealth," approved April 17, 1869, P. L. 72, absolutely.

An act entitled "A supplement to an act relating to assignees for the benefit of creditors and other trustees, approved June fourteenth, one thousand eight hundred and thirty-six," approved May 17, 1871, P. L. 269, in so far as it relates to fiduciaries appointed by

the orphans' court or by virtue of any last will or testament.

An act entitled "A further supplement to an act entitled, 'An act relating to executors and administrators, approved twenty-fourth February, one thousand eight hundred and thirty-four,'" approved May 17, 1871, P. L. 269, absolutely.

An act entitled "A further supplement to an act, entitled 'A further supplement to an act relating to orphans' courts,' passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, and the supplement, passed fourteenth of April, one thousand eight hundred and thirty-five, and the further supplement, passed fourteenth of April, one thousand eight hundred and forty," approved May 25, P. L. 279, absolutely.

An act entitled "An act providing for the entry of certain proceedings on the judgment indexes of the several courts of this Commonwealth," approved June 15, 1871, P. L. 387, in so far as it relates to proceedings to revive and continue the lien of debts against a decedent's real estate.

An act entitled "An Act relating to foreign executors, administrators, guardians and representatives of decedents and wards," approved April 8, 1872, P. L. 44, absolutely.

An act entitled "An Act to provide for the recording of deaths of testators and intestates in the office of register of wills," approved May 15, 1874, P. L. 194, absolutely.

An act entitled "An Act relative to the transfer of the loans of this Commonwealth, and of the city of Philadelphia, and to amend the provision of the twenty-second section of an act, entitled 'An Act to authorize the Governor to incorporate the Delaware Canal Company, and for other purposes,' approved the thirteenth day of April, eighteen hundred and forty-three, and extending the same to the holders of any loans of this Commonwealth, or of the city of Philadelphia,

domiciled or resident out of this Commonwealth, who shall have heretofore died or hereafter die," approved May 15, 1874, P. L. 195, absolutely.

The proviso to Section 6 of "An Act relating to the organization and jurisdiction of orphans' courts, and to establish a separate orphans' court in and for counties having more than one hundred and fifty thousand inhabitants, and to provide for the election of judges thereof," approved May 19, 1874, P. L. 206, absolutely.

An act entitled "An Act to validate sales and conveyances, under the decrees of courts of this Commonwealth, by persons irregularly or improperly appointed or defectively qualified," approved April 28, 1876, P. L. 50, in so far as it relates to proceedings in the orphans' court.

An act entitled "A further supplement to an act, entitled 'An Act relating to orphans' court,' approved the twenty-ninth day of March, Anno Domini one thousand eight hundred and thirty-two, designed to extend the fourteenth section of said act, so as to authorize investments by executors, trustees and other persons holding property in a fiduciary capacity in bonds or certificates of debt created by any of the counties, cities or municipal corporations of this Commonwealth," approved May 8, 1876, P. L. 133, absolutely.

An act entitled "An Act relating to the execution of trusts by corporations," approved February 16, 1877, P. L. 3, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

Sections 1 and 2 of an act entitled "An Act to provide for and to validate the execution and delivery of deeds and conveyances of real estate, in cases in which administrators, executors, guardians and trustees, may die or have died, between the time of sale and the time appointed for the payment of purchase money and delivery of the conveyance, and also in cases in which the administrator, executor, guardian or trustee may have received authority from the proper court to purchase real estate sold by him, either under the pro-

visions of any last will and testament, or by the authority or under the direction of any court having jurisdiction to make a decree, directing such real estate to be sold," approved May 22, 1878, P. L. 83, in so far as they relate to the orphans' court.

Sections 1, 2 and 3 of an act entitled "An Act to provide for the appointment of trustees *durante absentia*, and defining the powers and duties of the same," approved April 11, 1879, P. L. 21, absolutely.

An act entitled "An Act to regulate the compensation of auditors and commissioners," approved June 4, 1879, P. L. 84, in so far as it relates to auditors and commissioners appointed by the orphans' court.

An act entitled "A supplement to extend the provisions of an act, entitled 'An Act providing additional remedies against trustees of a trust created for life, or during marriage, and providing a remedy for the protection of their sureties,' approved the twenty-seventh day of March, Anno Domini, one thousand eight hundred and sixty-five, to the orphans' courts of the respective counties of this Commonwealth," approved May 10, 1881, P. L. 14, in so far as it relates to trustees subject to the jurisdiction of the orphans' court.

An act entitled "A supplement to an act, approved April thirteen, one thousand eight hundred and fifty-nine, entitled 'An Act relating to executors, administrators and guardians,' " approved June 10, 1881, P. L. 106, absolutely.

An act entitled "An Act to confer power on the several orphans' courts having jurisdiction of the accounts of executors and administrators to order and direct a sale for the payment of the debts of such decedent of any lands lying partly in two or more counties," approved June 4, 1883, P. L. 65, absolutely.

An act entitled "An Act providing the manner in which widows' and children's exemption in decedents' estates shall and may be set aside to them in certain cases," approved June 4, 1883, P. L. 74, absolutely.

An act entitled "An Act to permit foreign executors or administrators to issue *scire facias* to preserve and continue the lien or liens of judgments in favor of decedents within this Commonwealth, and before letters of administration have been taken out within this state," approved June 27, 1883, P. L. 163, absolutely.

An act entitled "An Act relating to the grant of letters of administration upon the estates of persons, presumed to be dead, by reason of long absence from their former domicile," approved June 24, 1885, P. L. 155, absolutely.

An act entitled "An Act limiting the time within which action may be brought upon refunding bonds given upon the distribution or partition of estates of decedents," approved June 30, 1885, P. L. 203, absolutely.

An act entitled "An Act authorizing executors or trustees to unite with others in the organization of corporations," approved April 22, 1889, P. L. 42, absolutely.

An act entitled "An Act to authorize courts, having cognizance of trusts created by deed or will, to direct trust funds to be placed in the custody of trustees appointed by the courts of another state or territory of the United States, in cases where the person or persons beneficially interested in such trust have removed to such other state or territory of the United States," approved May 8, 1889, P. L. 123, in so far as it relates to trusts created by will.

An act entitled "An Act relating to orphans' court sales," approved May 9, 1889, P. L. 182, absolutely.

An act entitled "An Act amending an act, entitled 'An Act respecting the estate of non-resident wards,' approved the twenty-first day of April, Anno Domini one thousand eight hundred and fifty-six, extending the provisions thereof so that the same may apply to trustees and *cestui que trusts*," approved May 13, 1889, P. L. 190, absolutely.

Section 2 of an act entitled "An Act relating to judicial sales and the preservation of the lien of mortgages," approved May 19, 1893, P. L. 110, absolutely.

An act entitled "An Act to enable the surety of any trustee, committee, guardian, assignee, receiver, administrator, executor, or other trustee, or any person interested in the trust, to require the filing of statements exhibiting the manner of the investment of the trust funds, and providing for the removal of such trustee, committee, guardian, assignee, receiver, administrator, executor, or other trustee, by the court," approved June 3, 1893, P. L. 273, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act regulating the satisfaction, extinguishment or discharge of dowers, legacies or other charges upon land, by judicial decree where the legal presumption of payment of the same exists from lapse of time, or where payment of the same has been made in full and no satisfaction, extinguishment, release thereof appears of record," approved June 8, 1893, P. L. 356, absolutely.

An act entitled "An Act to limit the duration of the lien of the debts of decedent other than those of record on their real estate," approved June 8, 1893, P. L. 392, absolutely.

An act entitled "An Act providing for the release and discharge of encumbrances or charges on land in all cases in which the period of twenty-one years has elapsed after the principal of the encumbrance or charge has become due and payable, and no payment has been made within such period of twenty-one years on account of such encumbrance or charge by the owner or owners of the land sought to be released and discharged and no sufficient release is of record in the county, and regulating proceedings of such release and discharge," approved May 8, 1895, P. L. 44, in so far as it relates to the orphans' court.

An act entitled "A supplement to an act entitled 'An Act relating to executors and administrators,' approved February twenty-fourth, one thousand eight hundred and thirty-four, relating to the lien of judgments against decedents," approved June 18, 1895, P. L. 197, absolutely.

Section 1 of an act entitled "An Act providing that the right of action for injury wrongfully done to the person shall survive against the personal representative of the wrong-doer, and limiting the time within which suit for such injury must be brought," approved June 24, 1895, P. L. 236, absolutely.

An act entitled "An Act to allow receivers, assignees, guardians, committees, trustees, executors and administrators to include in the lawful expenses of executing their trusts such reasonable sum paid a company, authorized under the laws of this state so to do, for becoming their surety as may be by court allowed, not exceeding one per centum per annum on the amount of such bonds," approved June 24, 1895, P. L. 248, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act to authorize executors and trustees, non-residents of the Commonwealth, to convey real estate," approved June 23, 1897, P. L. 200, absolutely.

An act entitled "An Act authorizing the payment into the orphans' court of the money due on dowers, legacies or other charge upon land where the person or persons to whom the dower, legacy or other charge upon land is due and payable cannot be found, and providing for the satisfaction, extinguishment or discharge thereof, and to ascertain the amount thereof," approved July 14, 1897, P. L. 269, absolutely.

An act entitled "An Act enlarging the powers of the orphans' court, and to provide a further remedy for the collection of dower interest due to widows," approved April 28, 1899, P. L. 120, absolutely.

An act entitled "An Act authorizing the orphans' courts of the Commonwealth to decide specific performance of written contracts, and also parol contracts when so far executed that it would be inequitable to rescind, for the sale of real estate, where the vendor has died without conveying, and in cases where the vendee has died without having paid the purchase money, and authorizing the recording of the decrees in such cases in the counties where the real estate lies," approved April 28, 1899, P. L. 157, absolutely.

An act entitled "An Act to allow an executor, administrator, guardian, assignee, or trustee to institute an action at law, or other legal or equitable proceedings, against a co-executor, administrator, guardian, assignee or trustee, to recover or enforce any debt or obligation individually due the estate which he represents," approved May 11, 1901, P. L. 174, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act to confer on the several orphans' courts having jurisdiction of the accounts of guardians, power to order and direct a mortgage or a public or private sale, for the payment of debts or for other purposes, of any lands lying partly in two or more counties, divided by county lines," approved May 21, 1901, P. L. 272, absolutely.
from their distributive shares of said real estate the

An act entitled "An Act to amend the first section of an act, entitled 'An Act to limit the duration of the lien of the debts of decedents, other than those of record, on their real estate,' approved the eighth day of June, Anno Domini one thousand eight hundred and ninety-three, and to extend the provisions of said act so as to limit the duration of the lien upon real estate of the decedents, other than those secured by mortgage or by judgment entered or revived by *scire facias* within five years prior to the death of such decedent," approved June 14, 1901, P. L. 562, absolutely.

Section 1 of an act entitled "An Act authorizing the orphans' court to adjudge real estate to persons, to whom the right to take the same at a certain valuation has been given in a will, and who are appointed executors of the same will; providing for the payment of the purchase money, and confirming titles to real estate heretofore taken under similar proceedings," approved March 5, 1903, P. L. 10, absolutely.

An act entitled "An Act providing for the voting of shares of stock in corporations in this Commonwealth, held by executors, administrators, guardians, and trustees, and the manner of voting the same," approved March 16, 1905, P. L. 42, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act to amend the first section of an act approved the eleventh day of April, Anno Domini one thousand eight hundred and seventy-nine, entitled 'An Act to provide for the appointment of trustees *durante absentia*, and defining the powers and duties of the same,' providing for the appointment of a trustee of the estate of any absentee, who has been a resident of this Commonwealth or of any other state, territory or foreign country, who has left either real or personal estate, or both, in this Commonwealth," approved March 30, 1905, P. L. 77, absolutely.

An act entitled "An Act to regulate the transfer of funds from executors and administrators, in this Commonwealth, to foreign executors and administrators," approved March 31, 1905, P. L. 91, absolutely.

An act entitled "An Act to extend the statute of limitations to debts or demands arising or falling due to the estate of a decedent after the death of such decedent," approved April 6, 1905, P. L. 114, absolutely.

An act entitled "A supplement to an act entitled 'An Act relating to the granting of letters of administration upon the estates of persons, presumed to be dead, by reason of long absence from their former domicile,' approved June twenty-fourth, one thousand eight hundred and eighty-five; providing for the probate of a

will of a person whose death, by presumption has been established, and for attachment of such will to letters of administration granted in the case," approved April 14, 1905, P. L. 153, absolutely.

An act entitled "An Act to amend an act approved the seventeenth day of May, one thousand eight hundred and sixty-six, entitled 'An Act enlarging the powers of the orphans' court, so as to discharge liens on real estate,' so as to include charges on real estate by the provisions of a last will and testament, or otherwise," approved March 22, 1907, P. L. 29, absolutely.

An act entitled "An Act authorizing employers to pay to the wife, children, brother or sister, father or mother, boarding-house keeper, undertaker, nurse, or physician wages due a deceased employe," approved May 23, 1907, P. L. 201, absolutely.

An act entitled "An Act to allow receivers, assignees, guardians, committees, trustees, executors, and administrators to include in the lawful expenses of executing their trust such reasonable sum paid a company, authorized under the law of this state so to do, for guaranteeing the payment of the principal and interest of mortgages or other securities in which they are required to invest the funds of their estate, not exceeding one-half of one per centum per annum on the principal of such mortgage or other securities," approved May 28, 1907, P. L. 271, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act to provide for the discharge of sureties upon bonds of trustees, committees, guardians, assignees, receivers, executors, administrators, and other fiduciaries," approved June 1, 1907, P. L. 384, in so far as it relates to fiduciaries subject to the jurisdiction of the orphans' court.

An act entitled "An Act authorizing the parties in interest, or their counsel, to select auditors and masters needed in judicial proceedings; except in divorce

cases," approved April 1, 1909, P. L. 95, in so far as it relates to proceedings in the orphans' court.

An act entitled "An Act to amend sections twenty-nine and thirty of an act, approved the twenty-ninth day of March, Anno Domini eighteen hundred and thirty-two, entitled 'An Act relating to orphans' courts,' and validating execution and attachment execution process issued out of the courts of common pleas of this Commonwealth, upon transcripts from any orphans' court of this Commonwealth, for balances due from, or in the hands of, an executor, administrator, guardian, or other accountant, on the settlement of their respective accounts in the orphans' court," approved April 27, 1909, P. L. 202, except in so far as it relates to proceedings begun prior to its date.

An act entitled "An Act to limit the duration upon real estate of the debts of decedents, including the expenses of the settlement of the estate, and to provide under what conditions the lien may be continued," approved May 3, 1909, P. L. 386, absolutely.

An act entitled "An Act to provide for the filing, auditing, and confirmation, in certain cases, of accounts of trustees and of committees of lunatics and of habitual drunkards," approved May 3, 1909, P. L. 391, in so far as it relates to trustees subject to the jurisdiction of the orphans' court.

An act entitled "An Act providing that the widow or children of any decedent dying outside of this Commonwealth, but whose estate is settled in this Commonwealth, may retain either real or personal property belonging to said estate to the value of three hundred dollars," approved May 6, 1909, P. L. 459, absolutely.

Sections 1, 2 and 3 of an act entitled "An Act relating to private sales of real estate, ordered, decreed, or approved by the orphans' courts; and providing a method of giving notice of such sales, and validating such private sales of real estate, heretofore made under the authority of the orphans' court, for the payment of debts," approved June 9, 1911, P. L. 724, absolutely.

An act entitled "An Act to amend section ten of an act, approved the twenty-ninth day of March, Anno Domini one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' courts,' so as to permit the accounts of the guardians of minors' property therein mentioned and described to be examined and audited, and the matters therein contained confirmed by decree of orphans' court, with the same force and effect as the partial accounts of executors, administrators, and temporary trustees are audited, examined, allowed, and confirmed," approved June 9, 1911, P. L. 744, absolutely.

An act entitled "An Act to confer power on the several orphans' courts having jurisdiction thereof, when the balance for distribution in an estate, after the debts are paid, includes stocks, bonds, and other securities, to make distribution of the same in kind to parties entitled thereto, to authorize subsequent sales thereof, and to validate such distributions heretofore made," approved June 10, 1911, P. L. 870, absolutely.

An act entitled "An Act to provide that persons buying real estate in this Commonwealth, from executors or trustees named in the last will and testament of any person dying testate, and who hold the same in trust under the provisions thereof, and who make sale of same under the power of sale in said last will and testament contained, shall take title to said real estate free and discharged of any obligation to see to the application of the purchase money," approved June 10, 1911, P. L. 874, absolutely.

An act entitled "An Act to amend an act, approved the eighth day of April, Anno Domini one thousand eight hundred and seventy-two, entitled 'An Act relating to foreign executors, administrators, guardians, and representatives of decedents and wards,' by extending the provisions thereof to the assignment and satisfaction of record of mortgage debts and indentures of mortgage and to the receipt of the interest

thereon," approved June 13, 1911, P. L. 890, absolutely.

An act entitled "An Act to amend an act approved the twenty-fourth day of February, one thousand eight hundred thirty-four, entitled 'An Act relating to executors and administrators,' " approved May 23, 1913, P. L. 344, absolutely.

An act entitled "An Act relating to the real estate of persons presumed to be dead, and providing a method of freeing such estate from all claim or interest of such persons," approved May 28, 1913, P. L. 369, absolutely.

An act entitled "A supplement to an act, entitled 'An Act relating to the grant of letters of administration upon the estates of persons, presumed to be dead, by reason of long absence from their former domicile,' approved June twenty-fourth, one thousand eight hundred and eighty-five; providing for the grant of ancillary letters of administration in this Commonwealth, upon the estates of persons presumed to be dead, by reason of long absence from their former domicile, in any other state, territory, or foreign country, who have left personal estate within this Commonwealth," approved May 28, 1913, P. L. 373, absolutely.

An act entitled "An Act to amend an act approved the ninth day of June, one thousand nine hundred and eleven, entitled 'An Act relating to private sales of real estate, ordered, decreed, or approved by the orphans' courts; and providing a method of giving notice of such sales, and validating such private sales of real estate, heretofore made under the authority of the orphans' courts, for the payment of debts,' " approved June 12, 1913, P. L. 470, absolutely.

An act entitled "An Act to amend an act, approved the fourteenth day of April, one thousand eight hundred fifty-one, entitled 'An Act relating to the commencement of actions, to judgments and decrees for the payment of money to the widows and children of decedents, to partitions in the common pleas, relative

to penalties on telegraph operators, to pleadings in certain actions of debt, to actions of ejectments, to the protection of fences, to partnerships, to limitations of writs of entry in manors, lands and tenements, to the exemption laws, to reports of the supreme court, to appeals relating to wards, boroughs and township officers, to the acknowledgments of deeds and sequestration of life estates,' by relating the appointment and number of appraisers," approved July 21, 1913, P. L. 877, absolutely.

Section 1 of an act entitled "An Act authorizing the several orphans' courts to empower guardians and trustees of estates of minors to elect, in writing, to take land in fee, which has been ordered to be sold by the provisions of any duly probated will, in lieu of legacies bequeathed or distributable to said minors from the proceeds of such sale, and validating certain **elections to take land in lieu of legacies heretofore made pursuant to an order of court,**" approved July 22, 1913, P. L. 908, absolutely.

An act entitled "An Act authorizing the orphans' court to reduce, under certain circumstances, the bond of any fiduciary; imposing duties on registers of wills in connection therewith," approved May 3, 1915, P. L. 218, absolutely.

An act entitled "An Act relative to estates of decedents," approved May 6, 1915, P. L. 265, absolutely.

An act entitled "An Act to amend an act approved the twenty-fourth day of February, one thousand eight hundred thirty-four, entitled 'An Act relating to executors and administrators,' as amended," approved May 6, 1915, P. L. 267, absolutely.

An act entitled "An Act to amend an act, entitled 'An Act to limit the duration upon real estate of the debts of decedents, including the expenses of the settlement of the estate, and to provide under what conditions the lien may be continued,' approved the third day of May, one thousand nine hundred and nine, so as to restrict the revival of judgment liens by the death

of the debtor to real estate still owned by said decedent at the date of his death," approved May 14, 1915, P. L. 475, absolutely.

An act entitled "A supplement to an act approved the fourteenth day of April, one thousand eight hundred and fifty-one, entitled 'An Act relating to the commencement of actions to judgments and decrees for the payment of money to the widows and children of decedents, to partitions in the common pleas, relative to penalties on telegraph operators, to pleadings in certions actions of debt, to actions of ejectments, to the protection of fences, to partnerships, to limitations of writs of entry in manors, lands, and tenements, to the exemption laws, to reports of the Supreme Court, to appeals, relating to wards, boroughs, and township officers, to the acknowledgments of deeds and sequestration of life estates,' providing a method of allowing a widow's exemption, where the property consists of real estate not readily divided," approved June 1, 1915, P. L. 682, absolutely.

An act entitled "An Act to amend section three of an act, approved the fourteenth day of April, Anno Domini one thousand nine hundred and five, entitled 'A supplement to an act, entitled "An act relating to the granting of letters of administration upon the estates of persons, presumed to be dead, by reason of long absence from their former domicile," approved June twenty-fourth, one thousand eight hundred and eighty-five; providing for the probate of a will of a person whose death by presumption has been established, and for attachment of such will to letters of administration granted in the case,' by providing for the issuance of letters testamentary to the executor named in such will, in the same manner and form as if such supposed decedent were actually dead," approved June 1, 1915, P. L. 689, absolutely.

An act entitled "An Act to amend section five of an act, entitled 'An Act relating to the grant of letters of administration upon the estates of persons presumed

to be dead, by reason of long absence from their former domicile;' approved the twenty-fourth day of June, Anno Domini one thousand eight hundred and eighty-five, by authorizing the several orphans' courts of this Commonwealth to accept refunding bonds from the distributees without sureties, in certain cases," approved June 11, 1915, P. L. 945, absolutely.

All other acts of Assembly, or parts thereof, that are in any way in conflict or inconsistent with this act, or any part thereof, are hereby repealed.

PARTITION ACT.

AN ACT.

Relating to the jurisdiction, powers and procedure of the several orphans' courts in proceedings for the partition and valuation of real estate, and for the sale of real estate for the purpose of distribution, and the fees, costs and expenses therein.

SECTION 1 (a) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, that the orphans' court of each county of this Commonwealth shall have jurisdiction, but not exclusive jurisdiction, in the partition and valuation of real estate, within the county, of any decedent, testate or intestate, whether such decedent was at the time of his death seised or possessed of such real estate solely or as tenant in common or joint owner with any other person or persons, and whether or not the surviving spouse of such decedent shall elect to take against his or her will, and notwithstanding there may be a limitation of an estate or interest in the premises or some part thereof, to a person or persons not in existence; and several undivided interests in any premises, derived from different ancestors by descent or devise, may be parted or valued in one proceeding in said court: *Provided*, That such court shall not have such jurisdiction during the continuance of any life estate in the whole of such real estate.

(b) Partition may be made under this act of lands and coal-rights therein, and of lands and timber-rights thereon, of any decedent, whether the rights of all the

parties be co-extensive with the whole or not; and whether the rights of some of them extend only to the lands and part of the coal therein, or only to the land and part of the timber thereon, or only to an undivided interest in the land, or in the coal therein or in the timber thereon; and any person having an interest as herein set forth may compel partition of the entire tract of land and coal, or land and timber, provided said coal or said timber has not been entirely severed so as to constitute a separate estate.

SECTION 2. The jurisdiction of the orphans' court under this act shall be exercised on the partition of the surviving spouse of the decedent, of any heir of the decedent in a case of intestacy, or of any devisee having an interest in the real estate in question in a case of testacy, whether the interest of such person be vested in possession or in remainder, or of any person having a life interest in an undivided share of such real estate, or of any alienee or devisee of any party in interest. If the party be a weak-minded person for whom a guardian has been appointed, or a minor, lunatic or habitual drunkard, the petition shall be filed by the guardian or committee of such party.

SECTION 3. On such petition, supported by oath or affirmation, the court may award a citation, returnable at a day certain, not less than ten days after the issuing thereof, directed to all the parties in interest other than the petitioner or petitioners, to show cause why an inquest in partition should not be awarded. Such citation shall be served in the manner provided by law for the service of other citations in the orphans' court.

SECTION 4. All parties in interest, including those entitled in remainder, shall be named in the petition, citation, decree and notices, when known; but if it shall appear, on oath or affirmation, that the names or residences of any of the parties are unknown to the petitioner for the partition, the orphans' court shall have the power to direct such notices as shall appear to the court to be reasonable and proper to be given to such

parties by publication, describing the parties, as far as practicable; and the proceedings shall be as effectual, to all intents and purposes, as if all the parties had been named in the proceedings.

SECTION 5. Where any of the parties in interest reside outside the Commonwealth of Pennsylvania and their places of residence are known, the court may, in its discretion, authorize any citations or notices provided for by this act, to be served upon them personally or by registered mail, or direct publication thereof.

SECTION 6. If, on the return of such citation, no answer or an insufficient answer be filed, or if, after hearing on petition, answer, replication and proofs, it shall appear proper, the court may appoint, on the agreement and nomination of the parties, three or more commissioners to divide or value the real estate described in the petition, with the same effect as a sheriff's inquest for the same purpose, or, if the parties can not so agree, may award an inquest to make partition among the parties in accordance with their respective interests, the inquest to consist of three men.

SECTION 7. The compensation of such commissioners, and of the jurors when an inquest is awarded, shall be fixed by the court, but shall not exceed five dollars a day each, for each day engaged in making such partition and valuation, unless the parties interested shall agree in writing to a larger compensation. Such commissioners and jurors shall also receive in addition to their daily pay three cents per mile circular for each mile necessarily traveled by them, counting from the place at which said commissioners or jurors first met.

SECTION 8. The commissioners or inquest shall, if the same can be done without prejudice to or spoiling the whole, make partition of the real estate in purparts among the parties entitled in accordance with their respective interests, whether such interests be equal or otherwise, and shall make return thereof to the court.

SECTION 9 (a) When any such estate cannot be divided among the parties entitled thereto without prej-

udice to or spoiling the whole, the said commissioners, or the said inquest, as the case may be, shall make and return a just appraisement thereof to the court.

(b) When equal partition in value, or partition in accordance with the respective interests of the parties, cannot be made by the said commissioners or the said inquest, they shall make a just appraisement of the respective purparts or shares into which they may divide the estate; and the court shall award that one or more of the purparts or shares shall be subject to the payment of such sum or sums of money as shall be necessary to equalize the value of the said purparts, according to the said appraisement thereof; which sum or sums of money shall be paid or secured to be paid, by the several persons accepting such purparts, in the manner prescribed in section seventeen hereof.

(c) When such estate cannot conveniently be divided into shares equal in number to the number of parties entitled, the said commissioners or the said inquest shall make a just appraisement of the respective purparts or shares into which they may divide the estate; and the parties to whom such shares shall be awarded, or some one in their behalf, shall pay or secure to be paid to the other parties interested, their respective parts of the value thereof, in the manner prescribed in section seventeen hereof.

SECTION 10. Where the decedent shall die seised or possessed, as tenant in common or joint owner, of any undivided interest in fee simple in any lands or tenements, the commissioners or inquest shall value and return such interest, undivided, in all cases; and if such decedent had other real estate, such interest shall be valued and returned, either by itself, or in connection with some other portion of such decedent's real estate, as one of the purparts or shares into which they shall divide the whole real estate; and upon the return thereof, the proceedings shall be as in other cases.

SECTION 11. In all cases of appraisement or partition mentioned in sections eight and nine of this act, the

orphans' court shall, on application, grant a rule on all persons interested, including those interested in remainder, to come into court, at a certain day to be fixed by the court, to accept or refuse the estate, or a share or portion thereof, as the case may be. A copy of such rule shall be served upon each party personally, ten days before the return thereof, in case such party resides within the county, or if any party shall reside outside the county the court may, in its discretion, authorize service of such rule upon him personally or direct such publication thereof as shall appear to the court to be reasonable and proper.

SECTION 12. In all cases of partition of real estate now pending or hereafter to be instituted, in any orphans' court, wherein a valuation shall have been made or shall be made of the whole or parts thereof, the same shall be allotted to such one or more of the parties in interest, whether entitled in possession or in remainder or to an undivided interest for life, and including the surviving spouse of the decedent, who shall, at the return of the rule to accept or refuse to take at the valuation, offer in writing the highest price therefor above the valuation returned; but if no higher offer be made for such real estate or any part thereof, it shall be allotted or ordered to be sold as herein provided.

SECTION 13 (a) When no bid above the appraisement of such real estate or any part thereof shall be made as provided in section twelve of this act, the court may order such real estate or part thereof to and among the parties in interest, including those entitled in remainder, as follows:—

First.—To the surviving spouse of the decedent if entitled, under the intestate law or under the will of the decedent, to a share of such real estate or part thereof in fee.

Second.—To the other parties in interest, in the order of their seniority in age.

(b) In case the party entitled to a choice do not come into court, in person or by guardian or committee, or attorney duly constituted, or in case he shall refuse the same, a record shall be made thereof, and the court may and shall direct the same to be offered to the next in succession, according to the rules provided in clause (a) of this section.

(c) In any case where a party has elected to take the real estate of a decedent in one county, or any share thereof, if divided into shares, such party shall not have the right of preference or election to take the real estate or any share thereof in any other county, or any other share in the same county, until all the other parties shall have neglected, after due notice, or refused to take the same at such valuation.

SECTION 14. The orphans' court having jurisdiction in any case of partition shall have power, wherever it shall appear advisable and proper, to cause the share or shares of the party or parties appearing in court to be allotted and assigned to them, and to permit the residue of the premises to remain for the person or persons entitled thereto, and subject to a future partition among them, if more than one person be so entitled.

SECTION 15. Where the real estate, or any part thereof, shall be allotted to the widow as the highest bidder, two-thirds of the purchase money thereof, in cases where by existing laws the widow is entitled to a dower of one-third in the real estate, and one-half of the purchase money thereof, in cases where by existing laws the widow is entitled to a dower of one-half in the real estate, shall be paid to those entitled thereto, as provided by law; the remaining one-third or one-half of such purchase money as the case may be, shall be paid to a trustee or trustees to be appointed by the court, which trustee or trustees shall give bond in double the amount to be received; the trustee or trustees as aforesaid, shall pay semi-annually, in lieu of dower, the interest on said one-third or one-half of the pur-

chase money, as the case may be, to the widow during her life, and at her death, the said trustee or trustees shall pay the purchase money to such persons as are entitled by law thereto.

SECTION 16. Upon return made by commissioners appointed by agreement of the parties, or of the inquisition taken, or when the real estate or any purpart thereof is awarded or allotted by the court, and a final decree is entered, the partition thereby made shall be firm and stable forever, subject only to the right of appeal.

SECTION 17 (a) In every case provided for in section twelve or section thirteen of this act, the party bidding in or accepting the real estate, or some one on his behalf, shall pay to the other parties interested their proportional parts of the value of such estate, according to the amount of the bid, or the just appraisement thereof, made in manner aforesaid, as the case may be, or shall give good security by recognizance, or otherwise, to the satisfaction of the court, for the payment thereof, with legal interest, at such time or times as in the judgment of the court shall be to the advantage of those entitled to the estate; and the persons to whom or for whose use payment or satisfaction shall be so made, in any of the cases aforesaid, for the respective parts or shares of such real estate, shall be forever barred of all right or title to the same.

(b) Where the court shall decree any share or shares to any person not residing within this Commonwealth, with the payment of owelty annexed, it shall be lawful for the court, upon application made by any party lawfully interested in the same, to order a rule upon such party, his or her legal heirs or representatives, requiring the payment of said owelty, at such time and upon such terms and conditions as the court shall direct. If the said rule cannot be served within this commonwealth, the court may, in its discretion, authorize service of such rule upon him or them personally or direct such publication thereof as shall appear to the court to

be reasonable and proper. Upon return and proof of service or publication as aforesaid, and upon refusal or neglect to comply with the said rule, the court may enforce the same by ordering a sale of such share or shares, for the purposes aforesaid, as in other cases of sales under this act.

(c) Wherever it shall appear that any party or parties, in whose favor a lien exists until payment be made to them of their respective shares of the money due from the party or parties to whom the real estate or any purpart thereof is awarded at the appraisement or at a price bid therefor above the appraisement, is or are unknown or cannot be found, the court shall have power to appoint a trustee to whom the shares of money due said unknown or other party may be paid, with power in said trustee, upon payment to him of said money, to satisfy said lien upon the proper records, whereupon the said land shall be freed and discharged from said lien. Such trustee shall first file a bond, to be approved by the court, conditioned for the faithful application of the money to him so paid, as aforesaid, according to the trust and order of court. It shall be the duty of the trustee to invest the said moneys in securities authorized by law.

SECTION 18 (a) Should the widow of the decedent be living at the time of the partition and entitled to a life estate in one-half or one-third of the real estate under the intestate laws, or should such widow elect to take against the will of the decedent and thereby be entitled to such life estate, she shall not be entitled to payment of the sum at which her purpart or share of the estate shall be valued, but the same, together with interest thereof, shall be and remain charged upon the premises, if the whole be taken by one person, or upon the respective shares, if divided as hereinbefore mentioned, and the legal interest thereof shall be semi-annually and regularly paid by the persons to whom such real estate shall be adjudged, their heirs or assigns, holding the same, according to their respective

portions, to the said widow, during her natural life, in lieu and full satisfaction of her dower at common law, and the same may be recovered by the widow by distress or otherwise, as rents in this Commonwealth are recoverable. On the death of the widow, the said principal sum shall be paid by the persons to whom the said real estate shall have been adjudged, their heirs or assigns, holding the premises, to the persons thereunto legally entitled.

(b) When the real estate of any decedent shall consist of several different tracts or pieces of land, and the same shall be adjudged to any of the parties entitled thereto, or ordered to be sold, by any orphans' court, such court shall have authority to decree that the share or purpart of the widow of such decedent in the whole of said real estate, where such widow is entitled to a life interest, together with the interest thereof, shall be and remain charged on one or more of the said tracts or pieces of land, in the manner and for the purposes now provided by law, and that the remaining tracts or pieces of land shall be wholly discharged from the share or purpart of such widow, or any part thereof: *Provided*, That the pieces or tracts of land, upon which such purpart or share shall be so charged as aforesaid, shall, in the opinion of such court, be fully sufficient to secure the payment of the principal and interest of such purpart or share: *And provided further*, That such widow shall have the same remedies for recovery of her interest as are provided in clause (a) of this section.

SECTION 19. Should any person other than the widow of the decedent be entitled, under the intestate laws, or should any person, including the widow of the decedent, be entitled under the will of the decedent, to a life interest in an undivided share of the real estate, the share of such tenant for life shall not be paid to him or her, but the same, together with interest thereof, shall be and remain charged upon the premises, if the whole be taken by one person, or upon the respec-

tive shares, if divided as hereinbefore mentioned, and the legal interest thereof shall be semi-annually and regularly paid by the persons to whom such real estate shall be adjudged, their heirs or assigns, holding the same, according to their respective portions, to the said tenant for life, during his or her natural life, and the same may be recovered by such life tenant as debts of like nature in this Commonwealth are recoverable. On the death of the life tenant, the said principal sum shall be paid by the persons to whom the said real estate shall have been adjudged, their heirs or assigns, holding the premises, to the persons thereunto legally entitled.

SECTION 20. In case of partition of real estate now or hereafter held by two or more persons as tenants in common, where one or more of said tenants shall have been or shall hereafter be in possession of said real estate, the parties in possession shall have deducted proportional part of the rental value thereof to which their co-tenant or co-tenants are entitled for the time such real estate shall have been in possession as aforesaid.

SECTION 21. Upon an appraisement or valuation of real estate made as provided in section nine or section ten of this act, should all the parties neglect, after due notice, as provided in section eleven hereof, or refuse to take the same or any part thereof at the valuation or to bid above the appraisement as provided in section twelve hereof, the court shall, on the application of any one of the parties, grant a rule upon the other parties interested, to show cause why the estate, or part thereof, so appraised and not taken at the appraisement or bid for, should not be sold; which rule shall be returnable at such time as the court, having respect to the circumstances of the case, may direct; and service of such rule shall be made in the manner provided by law for the service of citations in the orphans' court. On the return of such rule, the court may, on due proof of notice

to all persons interested, make a decree authorizing and requiring the executor or administrator, as the case may be, to expose such real estate, or part thereof, to public sale, at such time and place, and on such terms as the court may decree: *Provided*, That the rule to show cause herein directed may be dispensed with by the court, on the application of all the parties in interest, if of full age and sui juris, and of the guardians or committees of such as are weak-minded persons for whom guardians have been appointed, minors, lunatics or habitual drunkards, for such decree; and public notice of such sale shall be given by the person who is to make the sale, once a week for a period of three weeks before the day appointed therefor, by advertisement in at least one newspaper published in the county, if there be one, or, if there be none, then in an adjoining county; and in all cases, notice shall also be given by handbills, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such estate; and in any case the court may, by general rule or special order, require such further notice as it shall deem advisable.

SECTION 22. In all cases of the partition or valuation of real estate, the orphans' court may, upon the application of any party in interest, instead of the separate rules herein provided for such cases, grant a rule upon the parties interested to appear, and accept or refuse the said real estate at the valuation, or, in case they or any of them should neglect or refuse to take and accept the same as aforesaid, show cause why the said real estate, or any part thereof, should not be sold.

SECTION 23 (a) Whenever any person shall die seised of real estate, and the parties in interest desire the same to be converted into money for distribution, it shall be lawful for the orphans' court of the proper county, in its discretion, upon the joint petition of the widow and heirs, or devisees, and the guardians or

committees of such as are minors or under disability, in whom the real estate of the decedent shall have vested by descent or will, and legatees whose legacies are charged on said real estate, or the representatives of such as may be deceased or under disability, to order the executor or administrator, or a trustee to be appointed by said court, to make sale of said real estate. Such petition shall set forth the description of the property, the desire to have the same sold, and its estimated value according to the affidavits of two disinterested and competent persons, and said petition shall be duly sworn to. Said order shall provide that, before making sale, the executor, administrator or trustee shall give bond, in double the estimated value of the said real estate, and shall proceed thereafter in all respects in the manner provided by this act in cases of the sale of real estate under proceedings in partition. The proceeds of such sale, after payment of the expenses thereof, shall be distributed to and among those entitled thereto, the same as real estate. Such sale shall have the same effect in all respects as a public sale in proceedings in partition of real estate under this act.

(b) When the lands, in respect to which a petition for sale shall be filed under the provisions of clause (a) of this section, shall lie in one or more adjoining tracts in different counties, or shall lie in two or more counties, but not in adjoining tracts, the proceedings shall be in the courts designated in sections thirty-seven and thirty-eight of this act, respectively.

SECTION 24. Whenever any real estate shall be ordered to be sold under proceedings in partition, the orphans' court is hereby authorized and required, in case of the neglect or refusal of the executor or administrator to execute such order, or in case there be no executor or administrator, or in case the court for any reason deems it advisable, to appoint some suitable person trustee for the purpose of making such sale, who shall be subject to the same restrictions, and have

the same powers, and whose proceedings shall have the same effect, to all intents and purposes, as are provided in the case of such sales by executors or administrators.

SECTION 25. In all cases where the carrying out of any decree of the court under the provisions of this act shall involve the receipt of money, the court shall direct the person acting under the decree to file a bond to the Commonwealth in a sufficient amount conditioned for the proper application of all moneys to be received. Such bond shall inure to the benefit of all persons interested and be executed by two individual sureties or by one corporate surety, approved by the court. No such decree shall be executed until such bond, with sureties as may be required, shall be filed: *Provided*, That where a corporation, duly authorized by law, shall be designated to carry out any such decree, the court may, in lieu of security as aforesaid, permit such corporation to enter its own bond without surety.

SECTION 26. All public or private sales of real estate or of any part or purpart thereof, under the provisions of this act, shall have the effect of judicial sales as to the discharge of liens upon the real estate or part or purpart thereof so sold.

SECTION 27. In all cases of sales of real estate under the provisions of this act, when the entire purchase money shall not be paid in cash, the purchaser or purchasers shall enter recognizance in the orphans' court, with sufficient security, to be approved by said court, for the payment of the purchase money, or any balance thereof, over and above the costs and expenses of said proceedings, to the parties who may be entitled to the same. Such recognizance shall be a lien on the real estate so sold until fully paid and satisfied.

SECTION 28. Whenever a public or private sale of real estate shall be directed or confirmed under the provisions of this act, the person or persons purchasing the real estate so sold and taking title thereto in pursuance of the decree of the court, shall take such

title free and discharged of any obligation to see to the application of the purchase money.

SECTION 29. Where a decree for the sale of real estate shall be made by the orphans' court in the event provided for in section twenty-one hereof, the court shall direct that, if there be a widow entitled to a life interest in such real estate under the intestate laws, or should such widow elect to take against the will and thereby be entitled to such life estate, the share of the widow in the purchase money shall remain in the hands of the purchaser, during the natural life of the widow. The interest thereof shall be semi-annually and regularly paid to her by the purchaser, his heirs and assigns, holding the premises, and may be recovered by distress or otherwise as rents are recoverable in this Commonwealth, which the said widow shall accept in full satisfaction of her dower in such premises; and at her decease, her share of the purchase money shall be paid to the persons legally entitled thereto.

SECTION 30. In the case of a sale of real estate under proceedings in partition in the orphans' court, should any person other than the widow of the decedent be entitled, under the intestate laws, or should any person, including the widow of the decedent, be entitled under the will of the decedent to a life interest in an undivided share of the real estate, the share of such person shall not be paid to him or her, but shall remain charged on such or other real estate, according to the directions of the court; and the legal interest thereof shall be semi-annually and regularly paid by the purchaser of such real estate, his heirs or assigns, holding the same, during the natural life of such life tenant, and the same may be recovered by such life tenant as debts of like nature in this Commonwealth are recoverable, and on the death of the life tenant, the said principal sum shall be paid by the person by whom the said real estate shall have been purchased, his heirs or assigns, holding the premises, to the persons thereunto legally entitled.

SECTION 31. In any case of a sale of real estate under the provisions of this act, instead of the life interest of any person in an undivided share of the real estate remaining charged on the real estate as aforesaid, the court may, on petition of the person entitled to the life interest, or of the purchaser, direct the purchaser to pay such principal sum to a suitable person or corporation, who shall be appointed by the court as trustee to receive and hold such principal sum, invest the same in securities authorized by law, pay the income thereon, after deducting all legal charges, to the person entitled thereto, and, upon the death of such person, to pay over such principal sum to the persons thereunto legally entitled, after deducting all legal charges thereon. Such trustee shall enter such security as the court may direct, and shall not be an insurer of the trust fund, and shall be liable to the persons interested in the income or corpus of the trust fund only for such care, prudence and diligence in the execution of the trust as other trustees are liable for.

SECTION 32. In all cases where the letters testamentary or of administration shall be revoked, or the executor, administrator or trustee, or one or more of the co-executors, co-administrators, or co-trustees, authorized to make a sale of real estate under the provisions of this act, shall be removed by the court, or shall die, or become insane, or otherwise be incapable, before such sale is effected or before a deed of conveyance is made to the purchaser, such sale or such conveyance shall be made in the manner and with the effects as provided by law in other cases of sales by executors, administrators or trustees, under like circumstances.

SECTION 33. In all cases where, in consequence of proceedings in partition, the share, or any part thereof, of a party in interest, in real estate, shall be converted into money, either by reason of the impracticability or inequality of partition, or by virtue of a sale or otherwise, the orphans' court, before making a final decree

confirming the partition or distributing the proceeds of sale, as the case may be, may appoint a suitable person as auditor, to ascertain whether there are any liens or other incumbrances on such real estate, affecting the interests of the parties. If it shall appear by the report of such auditor or otherwise, that there are such liens, the court may order the amount of money which may be payable to any of the parties against whom liens exist, to be paid into court, and shall have full power to decree the distribution thereof among the creditors or others entitled thereto. Where recognizance or other security shall be given for the payment of money, the court may make an order on the party giving such recognizance or other security, to pay the amount thereof into court, when the same shall become due, to be distributed in like manner among the persons holding liens at the time of the partition.

SECTION 34. Upon the sale of any real estate by an executor, administrator or trustee, in proceedings in partition in the orphans' court, it shall be the duty of the said executor, administrator or trustee to file in the orphans' court of the proper county an account of the proceeds of such sale.

SECTION 35 (a) The costs in all cases of partition in the orphans' court, with a reasonable allowance to the petitioners for counsel fees, to be taxed by the court, or under its direction, shall be paid by all the parties, in proportion to their several interests.

(b) In all cases of sales of real estate, under the provisions of this act, it shall be lawful for the court to order and decree that the costs and expenses of said proceedings, including a reasonable compensation to the executor, administrator or trustee by whom said sale shall be made, shall be paid, on the confirmation of such sale, out of the proceeds thereof.

SECTION 36 (a) When any orphans' court having jurisdiction of any proceedings in the partition of real estate shall order, or has ordered, any such real estate or any purparts thereof to be sold, said court may

authorize or direct a private sale thereof, or may approve, ratify and confirm a private sale thereof made under an order for a public sale, if in the opinion of the court, under all the circumstances, a better price can be obtained at a private sale than at a public sale thereof.

(b) Before authorizing or directing any private sale of real estate under this act, public notice thereof shall be given by advertisement printed in at least one newspaper, published in the county where such real estate is situated, and in the legal periodical if any designated by rule of court for the publication of legal notices, and in such other papers as may be designated by the court, once a week for a period of three weeks prior to the date fixed by such order for authorizing or confirming such sale, and also written or printed notices, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which shall be posted at three of the most public places in the vicinity of such real estate. Before authorizing or directing such sale, the court shall require proof, by affidavit to be filed in the proceeding, that notice as aforesaid has been given. Such notice shall specify the location and description of the real estate proposed to be sold, the name of the proposed purchaser and the price agreed to be paid.

(c) On the day fixed by such order and notice for authorizing or directing such private sale, any party interested as heir, devisee or intending purchaser, or any legatee whose legacy is, by the express terms of the will, or by law, charged on such real estate, may appear and object to such private sale on account of the insufficiency of the price, and, if such objection be sustained, may offer to give or pay a substantial increase for such property. The court, at its discretion, may thereupon authorize or direct such sale, or refuse to authorize or direct the same, and accept any substantially increased offer, and may authorize the sale of such property to such new bidder upon compliance with

the conditions of sale and giving such security as shall be directed by the court. Such party interested or legatee may appear as aforesaid and object to such sale on any legal or equitable grounds. Nothing herein contained shall be construed to affect the existing law with respect to objections to public sales.

SECTION 37. When the lands, in respect to which application for partition shall be made to the orphans' court as aforesaid, lie in one or more adjoining tracts, in different counties, it shall be lawful for the orphans' court of the county in which the mansion house is situated, or, if there be no mansion house, the court of the county where the principal improvements may be, or, if there be no improvements, the court of either county, on the application of any person interested, either to proceed by the appointment of commissioners as aforesaid, or to issue its writ to the sheriff of the county within the jurisdiction of the court, specifying the lands of which a partition or valuation is to be made. Thereupon the said sheriff shall summon an inquest to divide or value the said lands, in the same manner as if the whole were within his proper bailiwick. Upon the return thereof, or upon the return of the commissioners appointed by the court, as aforesaid, the court may further proceed therein, in all respects as if all the said lands were in the county. Any recognizance taken in pursuance of such proceedings shall be as effectual, to all intents and purposes, as if the lands bound by it were wholly within the county where such recognizance is taken. A certified copy of the proceedings which may be had shall, within twenty days after the final decree therein, be delivered to the clerk of the orphans' court of each county in which the application shall not have been made, and in which any part of the said lands are situated, which shall be entered on the records of such court at the joint expense of all parties concerned.

SECTION 38 (a) All proceedings for the partition or valuation of real estate, under the provisions of this

act, where the real estate to be divided or valued is situated in two or more counties of this Commonwealth but not in adjoining tracts, shall be brought only in the county where the decedent, whose land is to be divided or valued, had his domicile, or if he had no domicile in the State, then in the county where the larger part of the estate in value shall be situated; or, with leave of such court, the parties interested may institute proceedings in the orphans' court in each county where such real estate is situated.

(b) In proceedings under this section, all process, writs and notices required to be served personally upon any person or persons interested in such proceedings may be served by the sheriff of any county of this State under deputization from the sheriff of the county in which such proceedings have been instituted or commenced.

(c) The commissioners or jurors for making partition or valuation under the provisions of this section may be selected from the county in which such proceedings are instituted, or from any one or more of the counties in which such land is situated. The compensation and mileage of said commissioners or jurors shall be the same as is provided in section seven of this act.

(d) This section shall include all proceedings in partition necessary to be had, as well before as after the refusal of the parties to take real estate at the valuation; and the said courts in which such proceedings are had, are hereby authorized to order the sale of such real estate, after such refusal, in the same manner as if all the real estate were situated in the county in which such proceedings are instituted: *Provided*, That the sales of such real estate shall be held in the county in which the real estate is situated, unless otherwise ordered by the said courts.

(e) Except as otherwise provided by this section, the proceedings hereunder shall be the same as provided by this act in other cases of partition and valuation.

(f) Certified copies of the record may be filed in every county where such real estate shall be situated, in the office of the clerk of the orphans' court thereof, and be received in evidence, with the like effect, as the records of the court where filed.

SECTION 39 (a) In all cases of partition in the orphans' court, where the court shall order and decree any party taking any portion of the estate at a bid or at the appraisement, or purchasing the same at a sale, as hereinbefore provided, to give any recognizance for the payment of any part of bid, valuation or purchase price, the court shall have power to appoint an auditor for the purpose of ascertaining advancements and making distribution among the heirs and parties in interest. In all cases in which such auditor has not been or may not be appointed, it shall be the duty of the court to make a calculation exhibiting the amounts due the respective parties in interest, and to direct the clerk of the court to record said calculation upon the partition docket of the court as a part of the proceedings in each case, for which services the clerk shall be entitled to a fee of one dollar.

(b) 1. Where a recognizance has been or shall hereafter be taken in any orphans' court, in any partition proceeding, as hereinbefore provided for, and the same, or any part thereof, shall be satisfied or paid to the person or persons interested therein, his, her or their agent or attorneys, any such person so having received satisfaction of the amount coming to him, shall enter an acknowledgment thereof upon the record of such court, which shall be satisfaction and discharge of said recognizance, to the amount acknowledged to be paid; and the recognizance shall cease to be a lien on the real estate of the conusor to a greater amount than the principal and interest actually remaining due.

2. If any person who shall have received satisfaction as aforesaid, for his claim or lien secured by such recognizance, shall neglect or refuse to enter upon the record his acknowledgment thereof, upon the written

request of the owner of the premises, bound by such recognizance, or of any part thereof, or of his legal representatives, or other persons interested therein, on tender of all the costs for entering such acknowledgment, the orphans' court, on due proof to them made that the entire amount due to any heir, legatee or distributee, shall have been fully paid and discharged, may make an order for the relief of such person from any recognizance or other recorded lien. Such order, being certified to the proper court where such lien may appear, shall be entered on the records, and shall inure and be received as a full satisfaction and discharge of the same.

SECTION 40. In all cases arising under this act, where there is a limitation of an estate or interest in the premises or some part thereof to a person or persons not in existence, the court shall have power to appoint a trustee to represent such unborn person or persons in the proceedings, and shall have power to make such further or other orders in regard to the property or purpart in which such person or persons may become interested, or the proceeds of the sale thereof, or any recognizance given with respect thereto, as justice and equity may require.

SECTION 41. It shall be the duty of the clerks of the orphans' courts of the several counties of this Commonwealth, and they are hereby required to enter in a book to be procured for that purpose, to be called a partition docket, all the proceedings in partition in every case in their respective courts, from the commencement to the final judgment and decree thereon, which shall be and the same is hereby made the record of said court; for which service, such clerks shall be entitled to receive the same fees as the recorders of deeds receive for recording, to be taxed and paid as part of the costs of such proceedings.

SECTION 42. It shall be the duty of the clerks of the orphans' courts of the several counties of this Commonwealth, and they are hereby required, to keep a separ-

ate index, to be known as the partition index, in which shall be entered in alphabetical order the names of all persons to whom any real estate shall be allotted or awarded in partition proceedings in said courts, and the names of all purchasers of real estate in such proceedings.

SECTION 43. Any party aggrieved by any definitive decree or judgment of any orphans' court, or by any order or decree awarding or refusing to award an inquest, or by an order of sale, under the provisions of this act, may appeal therefrom to the proper appellate court as in other cases of appeals from the orphans' court.

SECTION 44. This act shall be known and may be cited as the Orphans' Court Partition Act of 1917.

SECTION 45. The following acts and parts of acts of assembly are repealed as respectively indicated. The repeal of the first section of an act shall not repeal the enacting clause.

Section 22 of an act entitled "An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned," passed April 19, 1794, 3 Sm. L. 143, absolutely.

Section 8 of an act entitled "An Act supplementary to the act entitled 'An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein mentioned,'" passed April 4, 1797, 3 Sm. L. 296, in so far as it relates to the orphans' court.

An act entitled "A further supplement to the act entitled 'An Act directing the descent of intestates' real estates and distribution of their personal estates, and for other purposes therein mentioned,'" approved April 2, 1804, P. L. 459, absolutely.

An act entitled "A further supplement to an act entitled 'An Act directing the descents of intestates' real estates and distribution of their personal estates,

and for other purposes therein mentioned,' " approved April 1, 1805, P. L. 205, absolutely.

Sections 6, 7 and 8 of an act entitled "An Act supplementary to the several acts of this Commonwealth concerning partitions, and for other purposes therein mentioned," approved April 7, 1807, P. L. 155, absolutely, and section 9 of said act in so far as it relates to the orphans' court.

Section 2 of an act entitled "An Act to amend certain parts of an act, entitled 'An Act supplementary to the several acts of this Commonwealth, concerning partitions and for other purposes therein mentioned,' " approved March 26, 1808, P. L. 144, absolutely.

Sections 5 and 6 of an act entitled "A supplement to the act entitled 'A further supplement to the act, entitled an act to alter the judiciary system of this Commonwealth,' passed the eighth day of April, eighteen hundred and twenty-six," approved April 14, 1828, P. L. 484, absolutely.

Sections 36 to 46 inclusive, and 48 to 51 inclusive, of an act entitled "An Act relating to orphans' courts," approved March 29, 1832, P. L. 190, absolutely.

Sections 42, 44, 45 and 46 of an act entitled "An Act relating to executors and administrators," approved February 24, 1834, P. L. 73, absolutely.

Section 2 of an act entitled "Supplement to the act passed the twenty-ninth day of March, Anno Domini, one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' courts,' " approved April 14, 1835, P. L. 275, absolutely.

Section 4 of an act entitled "A further supplement to an act, entitled an act relating to orphans' courts, passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, and the supplement thereto, passed the fourteenth of April, one thousand eight hundred and thirty-five, and for other purposes," approved April 13, 1840, P. L. 319, absolutely.

Section 8 of an act entitled "An Act to incorporate the Butler County Mutual Insurance Company, and for other purposes," approved April 24, 1843, P. L. 359, absolutely.

An act entitled "A further supplement to an act relating to orphans' courts," approved April 6, 1844, P. L. 214, absolutely.

Section 1 of an act entitled "A supplement to the act of assembly, passed the twenty-ninth March, one thousand eight hundred and thirty-two, relating to the proceedings in the orphans' court of this Commonwealth, and for other purposes," approved April 15, 1845, P. L. 458, absolutely.

Section 1 of an act entitled "An Act in relation to partitions," approved April 21, 1846, P. L. 426, absolutely.

An act entitled "An Act relative to the orphans' court," approved March 13, 1847, P. L. 319, absolutely.

Section 4 of an act entitled "A supplement to an act relative to the venders of mineral waters; and an act relative to the Washington Coal Company; to sheriffs' sales of real estate; to the substitution of executors and trustees when plaintiffs; to partition in the courts of common pleas, and for other purposes," approved April 9, 1849, P. L. 524, except in so far as it relates to sales made before its date.

Section 10 of an act entitled "An Act to enable Thomas Hoge to make a fee simple title; to enable the trustees under the wills of Ephraim Clark and Catharine Yohe, Alex. Calder, administrator, Joseph B. Baker, guardian, and Nancy, John, and William Kline to sell certain real estate; relative to a school house in Elizabeth township, Lancaster county; to amend the charter of the second Jackson beneficial society of Philadelphia, and to extend the jurisdiction of the orphans' court," approved April 10, 1849, P. L. 591, except in so far as it validates partition proceedings begun before its date.

Section 2 of an act entitled "An Act relating to the bail of executrixes; to partition in the orphans' court and common pleas; to colored convicts in Philadelphia; to the limitation of actions against corporations; to actions enforcing the payment of ground rent; to trustees of married women; to appeals from awards of arbitrators by corporations; to hawkers and peddlers in the counties of Butler and Union; to the payment of costs in actions by informers in certain cases; to taxing lands situate in different townships; and in relation to fees of county treasurers of Lycoming, Clinton and Schuylkill; to provide for recording the accounts of executors, administrators, guardians and auditors' reports; and to amend and alter existing laws relative to the administration of justice in this Commonwealth," became a law April 25, 1850, by reason of the Governor's failure to return it within ten days, P. L. 569, absolutely, and Section 10 of the same act in so far as it relates to the orphans' court.

Sections 22 and 23 of an act entitled "An Act to incorporate the Wyoming County Mutual Insurance Company; relating to Library Street, in the city of Philadelphia; giving jurisdiction to the court of common pleas in Tioga County, in a certain divorce case; and relating to paving in front of the prison in the county of Philadelphia," approved April 26, 1850, P. L. 577, in so far as they relate to recognizances in partition.

Section 1 of an act entitled "An Act relative to suits in dower and partition," approved February 20, 1854, P. L. 89, in so far as it relates to the orphans' court.

An act entitled "A further supplement to the act, entitled 'An Act relating to orphans' courts,' passed the twenty-ninth day of March, one thousand eight hundred and thirty-two," approved April 12, 1855, P. L. 214, absolutely.

Section 4 of an act entitled "An Act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and per-

sonal estate," approved April 27, 1855, P. L. 368, in so far as it relates to the orphans' court.

Sections 1 and 2 of an act entitled "A supplement to an act relative to suits in dower and partition, passed twentieth February, one thousand eight hundred and fifty-four," approved April 17, 1856, P. L. 386, absolutely.

Section 10 of an act entitled "An Act for the greater certainty of title and more secure enjoyments of real estate," approved April 22, 1856, P. L. 532, in so far as it relates to the orphans' court.

An act entitled "An Act requiring administrators and trustees, upon the sale of real estate, after proceedings in partition, to file, in the register's office of the proper county, an account of their said administration, or trusteeship," approved April 11, 1863, P. L. 341, absolutely.

An act entitled "An Act relative to costs in cases of partition," approved April 27, 1864, P. L. 641, in so far as it relates to the orphans' court.

An act entitled "An Act relating to the committees of the estates of lunatics and habitual drunkards," approved March 22, 1865, P. L. 31, in so far as it relates to the orphans' court.

An act entitled "An Act relating to proceedings in partition," approved March 27, 1865, P. L. 45, absolutely.

An act entitled "A supplement to an act relating to orphans' courts, approved the twenty-ninth of March, Anno Domini one thousand eight hundred and thirty-two," approved January 7, 1867, P. L. 1367, absolutely.

An act entitled "An Act to extend the jurisdiction of the orphans' court of York and Fayette Counties," approved February 13, 1867, P. L. 160, absolutely.

An act entitled "An Act to repeal a portion of an act, entitled 'An Act relating to proceedings in partition,' approved the twenty-seventh day of March, Anno Domini one thousand eight hundred and sixty-

five," approved April 28, 1868, P. L. 105, absolutely.

An act entitled "A supplement to an act, entitled 'An Act relative to the orphans' court,' approved the thirteenth day of March, one thousand eight hundred and forty-seven, confirming certain partitions," approved February 26, 1869, P. L. 4, except in so far as it confirms partitions made before its date.

An act entitled "A further supplement to an act, entitled 'An Act relative to suits in dower and partition,' approved the twentieth day of February, Anno Domini one thousand eight hundred and fifty-four, and its supplement, approved the seventeenth day of April, Anno Domini one thousand eight hundred and fifty-six," approved March 30, 1869, P. L. 15, in so far as it relates to the orphans' court.

An act entitled "A supplement to the act relating to orphans' courts, approved the twenty-ninth day of March, Anno Domini one thousand eight hundred and thirty-two," approved April 13, 1869, P. L. 28, except in so far as it relates to declarations theretofore made by married women.

Section 2 of an act entitled "An Act relating to dowers," approved April 20, 1869, P. L. 77, absolutely.

An act entitled "An Act supplementary to the acts relating to orphans' court, approved the twenty-ninth day of March, one thousand eight hundred and thirty-two, regulating the sale of real estate by executors, administrators or trustees," approved May 23, 1871, P. L. 274, absolutely.

An act entitled "A further supplement to an act relative to suits in dower and partition, approved the twentieth day of February, Anno Domini one thousand eight hundred and fifty-four, and its supplement, approved the thirtieth day of March, Anno Domini one thousand eight hundred and sixty-nine, construing said act and extending jurisdiction of the courts therein," approved May 14, 1874, P. L. 156, in so far as it relates to the orphans' court.

An act entitled "An Act relating to the estates of decedents," approved May 14, 1874, P. L. 166, absolutely.

An act entitled "An Act enlarging the powers of the orphans' court in regard to fixing the time for the payment of owelty," approved May 8, 1876, P. L. 140, absolutely.

An act entitled "An act relating to partition of real estate," approved May 1, 1879, P. L. 40, in so far as it relates to the orphans' court.

An act entitled "An Act to provide for the keeping of a partition docket by the several clerks of the orphans' courts," approved April 4, 1889, P. L. 23, absolutely.

An act entitled "An Act to enlarge the jurisdiction of the orphans' courts in case of testacy," approved May 9, 1889, P. L. 146, absolutely.

An act entitled "An Act relating to sale of the real estate of decedents," approved June 12, 1893, P. L. 461, absolutely.

An act entitled "An Act relating to the partition of real estate, empowering the courts having jurisdiction to decree and approve and to approve, ratify and confirm private sales," approved May 22, 1895, P. L. 114, in so far as it relates to the orphans' court.

An act entitled "An Act to provide for the liability of tenants in common in possession to their co-tenants out of possession," approved June 24, 1895, P. L. 237, in so far as it relates to the orphans' court.

An act entitled "An Act relating to proceedings in partition and other actions, and for the appointment of committees, ad litem, therein when any of the defendants are lunatic," approved June 26, 1895, P. L. 381, in so far as it relates to the orphans' court.

An act entitled "An Act amending an act, entitled 'An act relating to proceedings in partition and other actions, and for the appointment of committees, ad litem, therein when any of the defendants are lunatic or persons of weak mind,' approved the twenty-sixth

day of June, one thousand eight hundred and ninety-five, so as to extend the same proceedings in the orphans' court and to enlarge the powers of said committees," approved June 10, 1901, P. L. 553, in so far as it relates to the orphans' court.

An act entitled "An Act relating to partition of real estate, and the appointment of a trustee to satisfy liens and to invest the moneys coming into his hands by proceeding in partition," approved April 3, 1903, P. L. 151, in so far as it relates to the orphans' court.

An act entitled "A supplement to an act, entitled 'An act for the greater certainty of title and more secure enjoyment of real estate,' approved the twenty-second day of April, one thousand eight hundred and fifty-six; so as to authorize a widow to accept real estate in partition, or compete in bidding therefor, and regulating and establishing a mode of payment therefor by the widow," approved June 1, 1907, P. L. 364, in so far as it relates to the orphans' court.

An act entitled "An Act to amend an act, entitled 'A supplement to an act, entitled "An act for the greater certainty of title and more secure enjoyment of real estate," approved twenty-second day of April, Anno Domini eighteen hundred and fifty-six; so as to authorize a widow to accept real estate in partition, or compete in bidding therefor, and regulating and establishing a mode of payment therefor by the widow,' approved the first day of June, Anno Domini nineteen hundred and seven; by providing the method by which the dower interests of the widow, and the principal of the dower fund, should be secured in certain cases," approved May 8, 1909, P. L. 489, in so far as it relates to the orphans' court.

An act entitled "An Act to amend the act, approved the twelfth day of June, Anno Domini one thousand eight hundred ninety-three, entitled 'An act relating to sale of the real estate of decedents,'" approved May 23, 1913, P. L. 304, absolutely.

An act entitled "An Act to amend section three of an act, approved the fourteenth day of May, Anno Domini one thousand eight hundred seventy-four, entitled 'A further supplement to an act relative to suits in dower and partition, approved the twentieth day of February, Anno Domini one thousand eight hundred and fifty-four, and its supplement, approved the thirtieth day of March, Anno Domini one thousand eight hundred and sixty-nine, construing said act and extending jurisdiction of the courts therein,' by extending the provisions thereof to include persons having an undivided interest in the land or in the coal or timber thereon, when the same has not been entirely severed, and permitting such persons to compel partition of the entire tract," approved May 6, 1915, P. L. 269, in so far as it relates to the orphans' court.

All other acts of assembly, or parts thereof, that are in any way in conflict or inconsistent with this act, or any part thereof, are hereby repealed.

REVISED PRICE ACT

AN ACT

Relating to the jurisdiction, powers and procedure of the orphans' court and the court of common pleas as to sales, mortgages, conveyances on ground rent, leases, extinguishment of ground rents, partition, exchange, squaring and adjusting of lines between adjoining owners, consolidation and combination of mining lands and the leasing thereof, the joining by owners of undivided interests in making and taking conveyances in order to change the route or location of any right of way or passage over adjoining or other lands, and the subdivision of premises so as to command the highest price or greatest rents, and, for such purpose, the laying out or dedication of roads, streets, and alleys or the vacation of such as have not been accepted by the public authorities, where the court shall be of opinion that such decree will be to the interest and advantage of all those interested, and where the legal title is held by minors, lunatics, habitual drunkards or weak-minded persons, a married person whose spouse is a lunatic or has abandoned him or her for one year or has been absent and unheard of for seven years, by corporations having no capacity to convey or by any unincorporated association, by any religious, beneficial or charitable society or association incorporated or unincorporated, and the title is subject to forfeiture if real estate is held in excess of the amount prescribed by its charter or by law, by a corporation or individual or individuals and is subject to a trust of any description

whatever, by any person as to whom a presumption of death may have arisen, or any interest wherein is held by any person under legal disability to dispose thereof; where the legal title is an estate tail or is subject to the lien of debts of a decedent not of record, contingent remainders, executory devises, or remainders to a class, some or all of whom may not be in being or ascertained; where estates shall have been devised or granted for special or limited purposes, where there is a power of sale but the time may not have arrived for its exercise, any preliminary act may not have been done to bring it into exercise, the time limited for its exercise may have expired, or any one or more persons required to consent or join in its exercise may be non compos mentis, have removed out of the state, have died, refuse to act, unreasonably withhold consent or be absent and unheard of; where there has been or shall be a defective appointment in any deed or will and the necessary power is not given to the executor, devisee or appointee to make sale and conveyance; where a trust has been created and no power conferred on the trustee to do any of the acts which the court is hereby empowered to authorize or confirm; and to the effects of such decrees.

SECTION 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the orphans' court, in all cases where real estate, or a ground rent issuing thereout, shall be or shall have been acquired by descent or last will, partly by deed and partly by descent or last will, or by purchase by a trustee, executor or guardian, and in all other cases the court of common pleas of each county of this Commonwealth, shall have jurisdiction with respect to real estate situate within the county, and, in the cases hereinafter specified, to authorize or confirm:—

(a) The sale, mortgaging, conveying on ground rent, and leasing thereof, or the extinguishment or assignment of ground rents issuing thereout;

(b) The amicable partition and exchange thereof;

(c) The squaring and adjusting of lines between adjoining owners;

(d) The consolidation and combination of mining lands with other adjoining mining lands, so that they shall form one tract, and the leasing thereof in such manner that the several persons interested therein shall be seised of undivided interests in the whole, proportionate to their several undivided interests before such combination and consolidation, the rents or royalties received under the lease to be apportioned among them in like proportions;

(e) The joining by owners of undivided interests in making and taking conveyances, in order to change in part or in whole the route or location of any right of way or passage existing over and upon adjoining or other lands;

(f) The subdivision of the premises so as to command the highest price or greatest rents, and for such purpose, where the premises shall admit of or require it, the laying out and dedication of roads, streets and alleys, or the vacating of such as shall not have been paid for or received into actual use by the public, if found to be inconvenient and to make an unprofitable division of the property:

Provided, That such court shall be of the opinion that such decree will be to the interest and advantage of all those interested therein and without prejudice to any trust, charity or purpose for which the real estate or ground rent shall be held and without the violation of any law which may confer an immunity or exemption from sale or alienation.

SECTION 2. The several courts aforesaid shall exercise the jurisdiction conferred by section one of this act in all cases:

(a) Where the legal title is held: (One) By minors, lunatics or habitual drunkards, so duly found by inquisition, or by weak-minded persons for whom guardians have been appointed. (Two) By a married woman or married man whose spouse is a lunatic, or has abandoned him or her for one year or has been absent and unheard of for seven years. (Three) By corporations of any kind having no capacity to convey or by any unincorporated association. (Four) By any religious, beneficial or charitable society or association incorporated or unincorporated, and the title is subject to forfeiture if real estate is held in excess of the amount prescribed by its charter or now or hereafter prescribed by law. (Five) By a corporation of any kind or individual or individuals and is subject to a trust of any description whatever (Six) By any person who may have been absent and unheard from for seven years under those circumstances from which the law would presume his or her decease. (Seven) Or any interest therein is held by any person under legal disability to dispose thereof.

(b) Where the legal title is an estate tail or is subject to contingent remainders, executory devises, or remainders to a class, some or all of whom may not be in being or ascertained at the time of the entry of the decree.

(c) In all cases where estates shall have been devised or granted for special or limited purposes.

(d) Where there is a power of sale but (One) the time may not have arrived for its exercise, (Two) any preliminary act may not have been done to bring it into exercise, (Three) the time limited for its exercise may have expired, (Four) any one or more persons required to consent or join in its exercise may be a minor, non compos mentis, removed out of the State, have died, refuse to act, unreasonably withhold consent, or be absent and unheard of.

(e) Where there has been or shall be a defective appointment in any deed or will and the necessary power

is not given to the executor, devisee or appointee to make sale and conveyance of real estate.

(f) Where a trust has been created and no power conferred on the trustee to do any of the acts which the court is empowered to authorize or confirm under the provisions of section one hereof.

Such jurisdiction may be exercised whether the ownership or interest in real estate be held in severalty, joint tenancy or tenancy in common, or by husband and wife as tenants by entireties.

SECTION 3. Nothing herein contained shall be taken to repeal or impair the authority of any Act of Assembly, general or private, authorizing the sale of real estate by decree of court or otherwise, nor to affect or impair any rights or powers, otherwise existing in any person or corporation to do any of the acts which the court is empowered to authorize or confirm under the provisions of section one of this act.

SECTION 4. All jurisdiction conferred by this act on the orphans' court or the court of common pleas shall be exercised on the petition of any party in interest supported by oath or affirmation; and if all proper parties shall not voluntarily appear as petitioners or respondents, the court shall fix a day for them to appear and cause a citation to be served on all persons in being who shall not have appeared, and who shall have any present or expectant interest in the premises, warning them to appear, and that they shall be heard on the day designated, and for those who cannot otherwise be served, cause advertisement to be made in manner most likely to afford notice, and service made in any part of the United States and the territories and possessions thereof, or elsewhere, with oath or affirmation of the fact, taken before any judge or justice of the peace or notary public, or any person authorized by the laws of the United States to take oaths or affirmations in foreign countries, and filed of record, shall be good service. Service having been made as aforesaid, the court shall, on the day

fixed, make such decree as shall be proper in the premises. Guardians shall be notified and appear for their wards; and if minors have no guardian, the court may appoint one for them in the manner now or hereafter prescribed by law for the appointment of guardians, and such appointment may be made on the petition of any party interested with notice to the persons who shall by law be charged with the duty of petitioning for the appointment of a guardian. Committees and guardians shall be notified and appear for lunatics, habitual drunkards and weak-minded persons, and in each of such cases notice shall be given to the next of kin. Trustees shall be notified and appear for the cestuis que trust, provided that cestuis que trust of age and sound mind, having vested interests or interests subject to a condition precedent, shall also be notified, and all cestuis que trust not in being or unascertained shall be represented by the trustees aforesaid.

SECTION 5. In all cases where, under the provisions of this act, sales, mortgages, leases, or conveyances on ground rent shall be authorized or directed, the same shall be made by executors, administrators, guardians, trustees, committees or owners having a present vested interest, or trustees appointed for the purpose, as the court may order.

SECTION 6. Where lands and tenements are held by will or otherwise, for life or *pur autre vie*, by any person or persons, with remainder to any minor or minors, and it shall appear to the court of the proper county, that it would be to the interests of such minor or minors that the same should be sold, in every such case upon the application of the tenant or tenants for life, or *pur autre vie*, as the case may be, the said court shall appoint a trustee to make sale of said lands; and the said trustee shall receive and hold the proceeds of such sale in trust for the parties in interest therein, and shall invest the same in investments authorized by law, and shall pay the interest thereof,

as it shall accrue, to the tenants for life, or pur autre vie, until the estate for life, or pur autre vie, shall have terminated, and shall then pay over the principal sum to the person or persons entitled to such remainder.

SECTION 7. Every such decree made by the court shall have the effect as to the title authorized to be transferred (a) Of a common recovery to bar an estate tail or a remainder, whether contingent or to a class. (b) Of barring executory devises. (c) Of defeating the right of the Commonwealth to forfeit real estate that may have been held by or for any corporation in excess of the amount now or hereafter duly authorized by law, only, however, in the case where no proceedings to procure a forfeiture shall have been commenced before the filing of the petition. (d) Of discharging the lien of decedents' debts not of record. In all cases where the proceedings shall be for the purpose of freeing the title of any of the limitations or defeasibility described in this section, that purpose shall be set forth in the petition in addition to the explanation of the title.

SECTION 8. The title transferred in pursuance of any such decree of the court shall be such as is authorized in the decree, which title shall be indefeasible by any person ascertained or unascertained or any class of persons mentioned in the petition or decree and having a present or expectant interest in the premises and shall be unprejudiced by any error in the proceedings of the court, and where security shall be entered in accordance with the provisions hereof, no party who shall pay over money in pursuance of the decree of the court shall be liable to see to the application thereof, or be in any manner liable for or affected by any lien of debts of a decedent not of record, or by any trust, limitation of, or defects in the title set out in the petition or decree in pursuance of which the money is paid over.

SECTION 9. In all cases where the court shall authorize or confirm the making of a mortgage, in any of the cases provided for in this act, the title shall upon the mortgage being duly paid and satisfied of record revert to its former condition, except that nothing herein contained shall operate to extend the lien of the debts of a decedent not of record beyond the time now or hereafter allowed by law, and upon legal proceedings being brought upon the mortgage or bond accompanying the same as may now or hereafter be provided by law and the title being sold at sheriff's sale, in pursuance of such proceedings, the surplus proceeds of the sale, if any, after paying the mortgage, with interest and all costs, and liens, which may by law be payable out of the fund, shall be paid over to the party who made the mortgage, or such other person as the court may direct or appoint for that purpose, to be held by him as part of the mortgage money and subject to the same liens or limitations, provided that the sheriff shall not pay over any such sum until such additional bond shall be filed as the orphans' court may require under the circumstances of the case.

SECTION 10. The purchase money, mortgage money, ground or other rents reserved or the title received in the case of an exchange or partition, for the title subject to a lien or limitation, shall be held for and applied to the use and benefit of the same persons and for the same interests, legal or equitable, present or future, vested, contingent or executory as the title so sold, mortgaged, conveyed on ground rent, let, partitioned or exchanged had been subject or held excepting only the case of an estate tail or the title of a corporation subject to forfeiture which in each case shall by the proceedings, without the necessity of a bond being filed by either the corporation or the tenant in tail, be converted into an absolute estate in fee simple and all remainders, whether contingent or to a class, executory devises, and debts of a decedent not of record shall be transferred to the fund or title raised by

the proceedings in pursuance of the decree, as to which fund or title they shall take effect in like manner as they would have taken effect as to the title transferred under the decree. The court shall make such order or orders from time to time as to the distribution or investment of such funds as may be requisite to protect the interest of all persons who are or may become entitled thereto or to any part thereof. In every case of a sale, mortgage, lease or conveyance on ground rent under the provisions hereof, the purchase money, mortgage money, ground rent or other rents reserved shall nevertheless have and retain the quality of real estate as respects the devolution under the intestate laws of the interest of any infant, lunatic, or person non compos mentis as whose property the land was sold, mortgaged, leased or conveyed on ground rent. The court having jurisdiction may direct the application of such proceeds or part thereof for the maintenance and education of minor parties whose personal estate shall be insufficient for such purposes, or generally for the maintenance or education of parties having the like interests vested or expectant, provided such moneys can be equally and equitably so applied and without diminution of the capital that may of right become the property of parties having unbarred interests or title in remainder, or by executory devise.

SECTION 11. No principal moneys raised by sale or mortgage, as aforesaid, shall be expended for any other purpose than for the payment of liens upon or the improvement of the same real estate when mortgaged, or other real estate when held for the same use and persons, except as provided in section ten of this act; and it shall be the duty of the court to decree the proper application of all purchase moneys and rents, with the aid of an auditor when deemed necessary, to the discharge of liens and to parties interested, as and when they may be entitled.

SECTION 12. In all cases where an application shall be made to the court for a decree authorized under any of the provisions of this act, the court may appoint a suitable person as master to investigate the facts of the case, and to report upon the expediency of granting the application and, in cases where authority is asked to make a sale or mortgage, upon the amount to be raised thereby; and upon such report being made, the court may decree accordingly.

SECTION 13. In all cases where the carrying out of any decree of the court under the provisions of this act shall involve the receipt of money by the person carrying it out, the court shall direct the person acting under the decree to file a bond to the Commonwealth in a sufficient amount conditioned for the proper application of all moneys to be received, which bond shall inure to the benefit of all parties interested and be executed by two individual sureties or by one corporate surety, approved by the court, and before any such decree shall be executed, such bond, with sureties as may be required, shall be filed: *Provided*, That where a corporation duly authorized by law, shall be designated to carry out any such decree, the court may, in lieu of security as aforesaid, permit such corporation to enter its own bond without surety.

SECTION 14. Whenever, by the provisions of this act, it shall be lawful for the court to order the public sale of real estate, public notice of such sale shall be given by the person who is to make the sale, once a week for a period of three weeks before the day appointed therefor, by advertisement in the legal periodical if any designated by rule of court for the publication of legal notices and in at least one newspaper published in the county, if there be one, or if there be none, then in an adjoining county; and in all cases, notice shall also be given by handbills, one of which shall be posted at a conspicuous place on the real estate proposed to be sold, and at least three of which

shall be posted at three of the most public places in the vicinity of such estate.

SECTION 15. Whenever, under the provisions of this act, the court has power to authorize or confirm a sale of real estate, the same may be made upon such terms as the court shall approve, all unpaid purchase money to be secured on the premises by mortgage.

SECTION 16. All deeds, mortgages or leases executed in pursuance of any decree of the court under the provisions of this act may be acknowledged before any officer or person now or hereafter authorized by the laws of this Commonwealth to take the acknowledgment of deeds and other instruments of writing to be recorded therein.

SECTION 17 (a) In all cases where the sale of real estate shall be made by an executor, administrator, guardian or trustee under an order of, or confirmed by, the court, or where the making of a mortgage by such fiduciary shall be authorized by said court, and the letters testamentary or of administration shall be revoked, or the executor, administrator, guardian or trustee shall be removed, or shall die, or become insane, or otherwise be incapable, before a conveyance is made to the purchaser, or before a mortgage is executed and delivered, it shall be lawful for the successor of such executor, administrator, guardian or trustee, having first given security, to be approved by the said court, for the faithful appropriation of the proceeds of such sale, to execute and deliver to the purchaser a deed of conveyance for the estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver said mortgage. If there shall be no such successor who shall have given security as aforesaid, the said court shall have power, on petition of the purchaser, to direct the clerk of the court to execute and deliver to the purchaser the necessary deed of conveyance, on his full compliance with the terms and conditions of sale, paying into court the moneys payable, and executing

and delivering to the clerk any bond and mortgage required by the said terms and conditions, which moneys and bond and mortgage shall remain subject to the disposition of the court; or, where the making of a mortgage by a fiduciary shall be authorized by said court, the court, under the circumstances aforesaid, shall have power to direct the clerk of the court to execute and deliver such mortgage. The like proceedings may be had where an executor, administrator, guardian or trustee shall neglect or refuse to execute and deliver such deed or mortgage for the space of thirty days after due notice of an order of the court requiring him to execute and deliver the same.

(b) In all cases where the sale of real estate shall be made by co-executors, co-administrators, co-guardians or co-trustees under an order of, or confirmed by, the court, or where the making of a mortgage by such co-fiduciaries shall be authorized by said court, and if one or more of such co-fiduciaries shall be removed, or shall die, or become insane, or otherwise be incapable, before a conveyance is made to the purchaser, or before such mortgage is executed and delivered, said court may, upon the facts being made to appear by petition duly verified, authorize the surviving or remaining fiduciary or fiduciaries to execute and deliver to the purchaser a deed of conveyance for the real estate so sold, on the purchaser's full compliance with the terms and conditions of sale, or to execute and deliver such mortgage.

(c) Where authority is or shall be given by decree of any court to executors, administrators, guardians or trustees to sell real estate, and any of such executors, administrators, guardians or trustees shall have died, been removed, become insane or otherwise be incapable, or cease to act, before a sale is effected, in all such cases said court may, upon the facts being made to appear by petition duly verified, authorize the surviving or remaining fiduciary or fiduciaries to effect such sales, with as full effect in all particulars,

as if effected or executed by the executors, administrators, guardians or trustees in office at the time the sale was originally decreed.

(d) Every sale made, and every deed or mortgage executed and delivered in pursuance of, and agreeably to the provisions of this section shall vest the property therein described in the grantee or mortgagee, as fully and effectually as if the same had been made, executed and delivered by all the fiduciaries to whom the authority to sell or mortgage was originally given.

(e) In all cases of sales or mortgages under the order of, or confirmed by the court, the title of the purchaser or mortgagee shall not be affected by the subsequent revocation of the letters testamentary or of administration of the executor or administrator making such sale or mortgage, or by the subsequent removal of the executor, administrator, guardian or trustee making such sale or mortgage.

(f) Whenever, in pursuance of proceedings in the court of any county, any person therein described as a trustee, guardian, executor, administrator, or as standing in any other fiduciary relation to the parties interested, shall grant and convey or mortgage any real estate, in which proceedings security shall be duly entered by him or her, under the order or decree of the court, no irregularity or defect in his or her original appointment, or the absence of any proper qualification in respect thereto, shall affect the title of the grantee, purchaser or mortgagee or the liability of the sureties, but the same shall be as valid in all respects as if such irregularity or defect had not existed.

SECTION 18. Whenever any court, having jurisdiction under this act to decree a sale or mortgage of real estate, shall issue its order to any executor, administrator, guardian or trustee, specially appointed for the purpose or otherwise, to sell or mortgage such real estate, and shall, in any case within its jurisdiction, give authority to any executor, administrator,

guardian or trustee, to bid at such sale, and shall confirm the sale to such fiduciary or shall authorize the making of such mortgage to any executor, administrator, guardian or trustee, the said court may make an order directing its clerk to execute a deed or mortgage, as the case may be, for said real estate to such purchaser or mortgagee, who shall give security and shall account for the amount of said purchase money or mortgage money, in the settlement of his accounts, to said court.

SECTION 19 (a) In all proceedings under the provisions of this act, where the real estate shall lie wholly within one county, the petition shall be presented only in the court of that county.

(b) When an application shall be made, under the provisions of this act, for the sale, mortgaging, leasing or other proceedings relating to real estate, through which real estate the line dividing two or more counties runs, the court of the county in which the mansion house is situated, or, if there be no mansion house, the court of the county where the principal improvements may be, or, if there be no improvements, the court of either county, may exercise jurisdiction as to the whole of such real estate, irrespective of the county line; and any such sale, mortgaging, leasing or other decree relating to real estate, shall be as effectual as if the whole of such real estate had been within the county whereof said court has jurisdiction. Notices of said proceedings, as required by this act, shall be given in all the counties in which the land is situated, and a certified copy of all proceedings shall be filed in the proper court of each county in which said land is situated. Any mortgage taken to secure the purchase money, or any part thereof, shall be duly recorded in each of the counties in which said lands lie, as required by law.

SECTION 20 (a) The courts of the several counties of this Commonwealth, in all cases where, under the provisions of this act, such courts have power to or-

der the sale of real estate, may authorize or direct a private sale, if, in the opinion of the court, under all the circumstances, a better price can be obtained at private than at public sale, as where the interest shall be undivided, or for any other sufficient cause.

(b) Any party interested as heir, devisee or intending purchaser, or any legatee whose legacy is, by the express terms of the will, or by law, charged on such real estate, may appear and object to such private sale on account of the insufficiency of the price, and, if such objection be sustained, may offer to give or pay a substantial increase for such property, and the court, at its discretion, may thereupon authorize or direct such sale, or refuse to authorize or direct the same, and accept any substantially increased offer, and may authorize the sale of such property to such new bidder upon compliance with the conditions of sale and giving such security as shall be directed by the court; or, such party interested or legatee may appear as aforesaid and object to such sale on any legal or equitable grounds: *Provided*, That nothing herein contained shall be construed to affect the existing law with respect to objections to public sales.

SECTION 21. All public sales of real estate under the provisions of this act shall be subject to confirmation by said court; but in the case of private sales authorized or directed under the provisions of this act, no return or confirmation shall be necessary.

SECTION 22. All public sales of real estate under the provisions of this act shall have the effect of judicial sales as to the discharge of liens upon the real estate so sold; but private sales shall not discharge the liens of debts of record.

SECTION 23. Whenever a public or private sale of real estate shall be authorized, directed or confirmed by any court under the provisions of this act, the person or persons purchasing the real estate so sold and taking title in pursuance of the decree of the court, shall take such title free and discharged of any obli-

gation to see to the application of the purchase money.

SECTION 24. In all cases and proceedings under this act, appeals may be taken to the proper appellate court from the orphans' court, as now provided by law in other cases, and from the court of common pleas, as provided in equity cases: *Provided*, That if any decree be carried into execution before the appeal be perfected, and written notice thereof given to any vendee, mortgagee, or lessee, any reversal thereof shall not affect the right or title of such vendee, mortgagee, or lessee, but the purchase or mortgage moneys or rents shall stand in lieu of the premises sold or mortgaged, or leased, so far as thus encumbered: *Provided, further*, That before any decree be carried into effect to afford such indemnity, twenty-one days be allowed from its entry to take and perfect such appeal.

SECTION 25. This act shall be known and may be cited as the Revised Price Act of 1917.

SECTION 26. The following acts and parts of acts of Assembly are repealed as respectively indicated. The repeal of the first section of an act shall not repeal the enacting clause of such act.

Section 10 of an act entitled "An Act supplementary to the several acts of this commonwealth concerning partitions, and for other purposes therein mentioned," approved April 7, 1807, P. L. 155, absolutely.

Section 2 of an act entitled "A supplement to the intestate law of this commonwealth," approved April 8, 1826, P. L. 255, absolutely.

Section 1 of an act entitled "An Act supplementary to the various acts relating to orphans' and registers' courts, and executors and administrators, and the act relating to the measurement of grain, salt, and coal," approved June 16, 1836, P. L. 682, absolutely.

Section 2 of an act entitled "A supplement to an act, entitled 'An Act relating to orphans' court,' approved the twenty-ninth of March, one thousand eight

hundred and thirty-two," approved March 16, 1847, P. L. 474, absolutely.

Sections 1 to 5 inclusive, of an act entitled "An Act supplementary to an act passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' court,' and relating to contracts of decedents and escheats in certain cases, and relative to the district court of the city and county of Philadelphia, and to registers of wills," approved April 3, 1851, P. L. 305, absolutely.

Sections 1 to 8 inclusive, and Section 10 of an act entitled "An Act relating to the sale and conveyance of real estate," approved April 18, 1853, P. L. 503, absolutely.

Sections 1 and 3 of an act entitled "A supplement to an act, entitled 'An Act relating to the sale and conveyance of real estate,' " approved April 13, 1854, P. L. 368, absolutely.

Section 5 of an act entitled "An Act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate," approved April 27, 1855, P. L. 368, absolutely.

An act entitled "A further supplement to the act, entitled 'An Act relating to the sale and conveyance of real estate,' passed the eighteenth day of April, one thousand eight hundred and fifty-three," approved April 1, 1863, P. L. 187, absolutely.

An act entitled "Supplement to an act, entitled 'An act relating to the sale and conveyance of real estate,' approved the eighteenth day of April, Anno Domini, one thousand eight hundred and fifty-three," approved April 18, 1864, P. L. 462, absolutely.

An act entitled "A supplement to an act relating to the sale and conveyance of real estate, approved the eighteenth day of April, one thousand eight hundred and fifty-three," approved April 17, 1866, P. L. 108, absolutely.

Sections 1 and 2 of an act entitled "An Act relating to judicial sales, and the preservation of the lien of mortgages," approved March 23, 1867, P. L. 43, absolutely.

An act entitled "A further supplement to an act, entitled 'An Act relating to the sale and conveyance of real estate,' approved the eighteenth day of April, Anno Domini, one thousand eight hundred and fifty-three, authorizing the courts to decree the leasing and combination of lands for mining purposes," approved June 8, 1874, P. L. 277, absolutely.

Section 1 of an act entitled "An Act to amend the second section of an act, entitled 'An Act relative to the sale and conveyance of real estate,' approved the eighteenth day of April, one thousand eight hundred and fifty-three, extending the provisions thereof to real estate upon which are limited vested remainders which are liable to open and let in after born children, and validating sales of real estate heretofore made by proceedings under said act of lands and tenements subject to such remainders," approved June 14, 1897, P. L. 144, absolutely.

Sections 1 and 2 of an act entitled "An Act authorizing the several orphans' courts of this commonwealth to decree the sale, mortgaging, leasing or conveyance upon ground-rent, of lands devised or held with remainder to a class of persons, some or all of whom are unborn, and to validate certain sales and conveyances heretofore made by decree of court in such cases," approved June 15, 1897, P. L. 159, absolutely.

An act entitled "An Act amending an act approved April seventeenth, one thousand eight hundred and sixty-six, entitled 'A supplement to an act relating to the sale and conveyance of real estate,' approved the eighteenth day of April, one thousand eight hundred and fifty-three; providing that deeds may be acknowledged before any justice of the peace, notary public, or other officer having authority to take acknowledge-

ment of deeds or other instruments of writing," approved April 22, 1903, P. L. 241, absolutely.

An act entitled "An Act relating to acknowledgments of deeds; authorizing county treasurers, county commissioners, sheriffs, executors, administrators, trustees, or other persons acting in an official or representative capacity, where now required or authorized to make acknowledgment of deeds or other instruments before justices of the peace, to make acknowledgments of deeds and other instruments before a notary public, or any officer authorized by law to take acknowledgments of deeds, and validating all such acknowledgments heretofore made before other officers than justices of the peace," approved April 23, 1909, P. L. 156, in so far as it relates to acknowledgments of deeds or other instruments made in pursuance of decrees entered under the provisions of this act.

An act entitled "An Act authorizing the several orphans' courts to empower guardians of the estates of minors to join with the cotenants of said minors in effecting amicable partition of lands held in common," approved May 23, 1913, P. L. 345, absolutely.

An act entitled "A supplement to an act approved the eighteenth day of April, one thousand eight hundred fifty-three, entitled 'An Act relating to the sale and conveyance of real estate,'" approved May 28, 1915, P. L. 635, absolutely.

All other acts of Assembly, or parts thereof, that are in any way in conflict with this act, or any part thereof, are hereby repealed.

REGISTER OF WILLS ACT .

AN ACT

Relating to the qualification, jurisdiction, powers and duties of registers of wills, and regulating proceedings before said registers, and the costs thereof, the effects of their acts, and appeals therefrom.

SECTION 1 (*a*) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That every person who shall be elected or appointed to the office of register of wills, before he shall enter upon the duties of the office, shall make oath or affirmation to support the constitution of the United States and the constitution of this Commonwealth, and to perform the duties of the office of register with fidelity.

(*b*) 1. He shall also, with one or more sureties, to be approved by the judge or judges, if there be more than one, of the orphans' court of the county for which the register shall be elected or appointed, and also by the governor, give a joint and several bond to the Commonwealth, in a sum equal to half the sum prescribed by law for the official bond of the sheriff for the time being of the same county, with condition faithfully to execute the duties of his said office, and well and truly to account for and pay, according to law, all moneys received by him for the use of the Commonwealth, and to deliver up the books, seals, records and other writings, belonging to his said office, whole, safe and undefaced, to his successor in office; which said bond shall be for the use of all persons concerned, and for the relief of all who may be aggrieved by the acts or neglect of such register.

2. Every person elected or appointed as aforesaid shall cause the bond hereinbefore prescribed, being duly acknowledged by him and his sureties, before a judge of the orphans' court of the county, to be recorded by the recorder of deeds of the county, and as soon afterwards as convenient, to be transmitted into the office of the secretary of the Commonwealth for custody, of which transmission he shall be entitled to receive the secretary's certificate, without fee or reward.

3. Copies of the record of the official bond of any register, acknowledged and recorded as aforesaid, and duly certified by the recorder of deeds for the time being, shall be good evidence, in any action brought against him or his sureties, on such bond, according to its form and effect, in the same manner as the original would be, if produced and offered in evidence.

4. The provisions of this clause shall not apply to registers of wills in counties having over eight hundred thousand and under one million five hundred thousand inhabitants according to the last preceding United States census.

(c) Whenever letters testamentary or of administration shall have been heretofore, or shall be hereafter granted by the register of wills of any of the counties in this Commonwealth, by the direction and in pursuance of an order of the orphans' court, and conformably thereto, the said register and his sureties shall not be liable on the register's official bond for any loss or damage which may have accrued or which may hereafter accrue to any person in consequence of the compliance of said register with the said order of the orphans' court.

SECTION 2. Every register shall appoint and keep a deputy, to officiate in his absence, for whose conduct he and his sureties shall be accountable; and such deputy shall be capable in law to take the probate of wills and testamentary papers, and to grant letters

testamentary and of administration, and to do whatever else by law appertains to the office of register.

SECTION 3. Every register qualified to act, as aforesaid, shall have jurisdiction, within the county for which he shall have been elected or appointed, of the probate of wills and testamentary papers, of the granting of letters testamentary and of administration, of the passing and filing of the accounts of executors and administrators, and of any other matter whereof the jurisdiction may be at any time expressly annexed to his said office; and the act of any register, in any matter whereof another register has the exclusive jurisdiction, shall be void and of no effect.

SECTION 4. Wills shall be probated only before the register of wills of the county within which was the family or principal residence of the decedent, at the time of his decease, and, if the decedent has no such residence in this Commonwealth, then only before the register of the county where the principal part of the goods and estate of such decedent within this Commonwealth shall be.

SECTION 5. Any register of wills shall have power to revoke letters of administration granted by him whenever it shall be made to appear to him that such letters have been granted to, or on the nomination of, persons who are not the next of kin of the decedent entitled to administer, or whenever, after the granting of letters of administration, a will of the decedent shall be duly proved and admitted to probate.

SECTION 6. No nuncupative will shall be admitted to probate, nor shall letters testamentary thereon be issued, till fourteen days after the day of the death of the decedent be fully expired, nor shall any nuncupative will, at any time, be admitted to probate, unless process have first issued to call in the surviving spouse of the decedent, if any, and such of his or her relations or next of kin as would be entitled to the administration of his or her estate in case of intestacy, to contest the same, if they please.

SECTION 7. Copies of wills and testaments proved in any other state, territory or possession of the United States of America, or any foreign country according to the laws thereof, and duly authenticated, may be offered for probate before any register having jurisdiction, and proceedings thereon may be had, with the same effect, so far as respects the granting of letters testamentary, or of administration with the will annexed, as upon the originals; and if the executor or other person producing any such copy shall produce also therewith a copy of the record of the proceedings for the probate of the original, and of the letters testamentary, or other authority to administer, issued thereon, attested by the person having power to receive the probate of such original, in the place where it was proved, with the seal of office, if there be one, annexed, together with the certificate of the chief judge or presiding magistrate of the state, country, county or district where such original was proved, that the same appears to have been duly proved, and to be of force, and that the attestation is in due form, such copies and proceedings shall be deemed sufficient proof, unless the contrary be shown, for the granting of letters testamentary or of administration with the will annexed, as the case may require, without the production or examination of the witnesses attesting such will.

SECTION 8. The register having jurisdiction, as aforesaid, shall, at the instance of any person interested, issue a citation to any person having the possession or control of a testamentary writing, alleged to be the last will and testament of a decedent, requiring him to produce and deposit the same in his office for probate; and if such person shall conceal or withhold such writing, during the space of fifteen days, after being personally served with a citation issued in the manner aforesaid, it shall be the duty of the register forthwith to certify the record of the proceeding to the orphans' court of said county, and the said court,

upon petition of any person interested, shall proceed to enforce obedience to said citation by attachment as in cases of citations issued from said court.

SECTION 9. Whenever any testamentary writing shall be offered for probate, or application shall be made for letters testamentary or of administration, before any register having jurisdiction thereof, such register shall have power to issue a subpoena, with or without a clause of *duces tecum*, to any person whose name may be subscribed to such testamentary writing as a witness, or who may be alleged to him to be otherwise capable of proving the due execution of such testamentary writing, or to any person who may be a material witness in the matter of such probate or of the granting of letters testamentary or of administration, commanding him, under a penalty of three hundred dollars, to appear before said register at his office, at a day certain, not less than five days from the service of such subpoena, and depose and testify what he may know concerning the execution of such writing or otherwise concerning such probate or the granting of letters; and if such person, being subpoenaed as aforesaid, shall refuse or neglect to appear as commanded, the register shall have power to issue an attachment against such witness to compel his appearance, or the party aggrieved may have an action against said witness to recover the said penalty, in the manner allowable by law in cases of subpoenas issued to witnesses by the courts of common pleas. Witnesses appearing before the register in obedience to subpoenas as aforesaid shall be entitled to the same fees and mileage as are allowed by law to witnesses in the orphans' court.

SECTION 10. On the application of any person interested, every register shall have power to issue commissions or rules to take the depositions of witnesses in other counties or states, or in foreign countries, in all cases within his jurisdiction.

SECTION 11. All original wills, after probate, and the copies of all original wills produced under the pro-

visions of this act, shall be recorded and filed by the register of the respective county, and shall remain in his office, except when required to be had before a higher tribunal, by certiorari, or otherwise, and if removed for such cause, they shall be returned in due course to the office where they belong; and the copies of all the probates thereof, under the public seals of the courts or officers where the same may have been, or shall be so taken or granted respectively, except copies of probates of such wills and testaments as shall appear to be annulled, disproved or revoked, shall be adjudged and are hereby enacted to be matter of record, and good evidence to prove the gift or devise thereby made.

SECTION 12 (*a*) Any and all person or persons who shall offer for probate any will or codicil, or who shall offer any other written or printed instrument to be recorded in any register's office in this Commonwealth, or to be filed in said office as required by law, which will, codicil or instrument shall be in any other than the English language, shall furnish at his, her or their expense, to the register, a sworn translation in English of such instrument, and the register shall attach or cause to be attached such translation to the original, and file both the original and the translation of record in his office, in all cases where filing is now or hereafter may be required by law; but in all cases where recording is now or hereafter may be required, both the original and the translation in English shall be recorded.

(*b*) The register of wills shall not file or mark filed, record or mark recorded, any written or printed instrument in violation of this section, nor shall any paper filed or recorded in violation of this section be notice to any person in any legal proceeding whatever, nor be received or considered in evidence in any proceeding at law, in equity or in the orphans' court.

SECTION 13. It shall be the duty of the registers of wills of the several counties of this Commonwealth to

record all inventories and appraisement of the estate of any decedent, filed in the office of the register of wills by the executor or administrator of any, such decedent's estate, in a book to be provided for that purpose; and the same shall be indexed by such register of wills, in an index book provided for that purpose; and true and attested copies or exemplifications of all such inventories and appraisements, so enrolled, certified under the hand and seal of such register of wills, shall be allowed in all courts, when produced, and are hereby declared and enacted to be as good evidence and as valid and effectual in law as the original inventory and appraisement themselves; and the said register of wills shall be allowed, for performing such duties, the same fees as are now allowed by law to such officers for performing similar services.

SECTION 14. It shall be the duty of every register to make and certify, under the seal of his office, true copies of all bonds, inventories, accounts, actings and proceedings whatsoever, remaining in his office, being thereunto required by any person having an interest therein, and to deliver the same, within a reasonable time, to such person applying therefor, on receiving the fee allowed to him by law for such copy or copies; and if any register shall refuse, after the tender of his lawful fees, to make or deliver such copy or copies as aforesaid, the orphans' court of the county may, on petition filed by the person so applying to the register, make and enforce such order upon said register as may be necessary to enforce his duty as aforesaid.

SECTION 15. In any case in which a last will or testamentary paper shall have been duly proved before the register of wills for any county of this Commonwealth, and shall relate to real estate in any county thereof, it shall be lawful to take from the office of such register a copy of said will or paper and of the probate thereof, duly certified by such register, under his seal of office, to be a full and perfect copy of the same, and to file the said copy in the office of the

register of wills in any county in which any of the real estate owned by the testator may be, which said register shall forthwith record the said copy. And the record of such copy shall be, and is hereby declared to be, as valid and effectual in law as the original will or paper after probate, or its duly certified copy, or its record would be for all purposes of vesting title, of evidence and of notice.

Like proceedings may be had at the instance of any party interested to obtain the certification of all subsequent proceedings appearing in the records of the register of wills concerning such probate.

SECTION 16 (a) The probate or refusal of probate by the register of the proper county of any will, or any other paper purporting to be a will or codicil thereto, shall be conclusive as to all property, real or personal, devised or bequeathed by such will or codicil or other paper, unless, within two years from the date of such probate or refusal of probate, those interested shall appeal from the decree of the register as herein provided: *Provided*, That all persons who would be sooner barred by this section taking immediate effect shall not be thereby barred before two years from the date hereof.

(b) The last will of any decedent may be offered for probate at any time: *Provided*, That if such will shall not have been offered for probate within three years from the date of the death of the testator, the same shall be void and of no effect against a bona fide conveyance or mortgage of the real estate of said decedent, duly recorded before the date of the offering of said will for probate.

SECTION 17. Whenever a caveat shall be entered against the admission of any testamentary writing to probate, and the person entering the same shall allege as the ground thereof any matter of fact touching the validity of such writing, it shall be lawful for the register, at the request of any person interested, to issue a precept to the court of common pleas of the

respective county, directing an issue to be formed upon the said fact or facts, and also upon such others as may be lawfully objected to the said writing, in substantially the following form, viz.:—

(L. S.) County, ss. The Commonwealth of Pennsylvania: To the judges of the court of common pleas of the said county, greeting: Whereas, A. B., on the _____ day of _____, in the year, et cetera, presented to G. H., our register of wills of said county, for probate, a certain writing hereto annexed, purporting to have been made the _____ day of _____, in the year, et cetera, (or otherwise describing the paper in question), which said writing the said A. B. avers is the last will and testament of the said C. D., and whereas E. D., who is a son and heir of the said C. D. (or intermarried with F. D., who is a daughter and heir, et cetera, according to the fact), hath objected before our said register that the said writing was procured by duress and constraint (stating the matters of fact objected), and whereas the said A. B. (or E. D.) hath requested that an issue may be directed into our said court to try by a jury the validity of the said writing, and the matters of fact which may be objected thereto in our said court; therefore, we command you that you cause an action to be entered upon the records of our said court, as of the day of the delivery of this our precept into the office of the prothonotary of our said court, between the said A. B. and the said E. D., so that an issue therein may be formed upon the merits of the controversy between the said parties, and tried in due course according to the practice of our said courts in actions commenced by writ; and further, that you cause all other persons who may be interested in the estate of the said C. D., as heirs, relations or next of kin, devisees, legatees or executors, to be warned, so that they may come into our said court and become party to the said action, if they shall see cause, and that you certify the result of the trial so

had in the premises into the office of our said register.

Attest. G. H., Register of Wills of the said county.

And the facts established by the trial had and certified to the register as aforesaid, shall not be re-examined by the said register, nor upon any appeal from his decision.

SECTION 18. Where a caveat is entered against the probate of any last will or testamentary paper, or where there is a dispute as to such probate or as to the granting of letters testamentary or of administration, the orphans' court of the county in which said will or testamentary paper has been offered for probate or said letters testamentary or administration have been applied for, may, by general rule or by special order in the case, on the petition of the register of wills of said county or of any party interested, direct said register to certify the entire record thereto pertaining to said court, which shall then determine whether the will or testamentary paper shall be admitted to probate or an issue devisavit vel non be directed to the court of common pleas of said county, or whether said letters testamentary or of administration shall be granted, in like manner as if the said will or testamentary paper had been admitted to probate, or said letters testamentary or of administration had been granted, by said register and an appeal been taken to the orphans' court from his decree. The record may be thus certified at any stage of the proceedings before the register, and after its removal to the orphans' court no letters of administration pendente lite shall be granted by the register except by leave of the orphans' court on cause shown by any party interested.

SECTION 19. Where objections are made, or a caveat is entered, against the probate of any last will and testament, and no precept for an issue is directed by the register into the court of common pleas as aforesaid, or where objections are made to the granting of letters testamentary or of administration to any per-

son applying therefor, or where any question of kindred or other disputable and difficult matter comes into controversy before any register, he may certify the entire record thereto pertaining to the orphans' court of the county, for the determination by said court of such disputable and difficult matter, giving convenient notice of the time when the matter will be heard in said court to all persons interested.

SECTION 20 (a) It shall not be lawful for any register of wills, having jurisdiction of the probate of wills and the granting of letters testamentary and of administration within this Commonwealth, to entertain, consider or regard any caveat against the probate of any last will and testament, or the granting of letters testamentary or of administration, or any appeal from the probate of any such will, or from the grant of any letters testamentary or of administration, unless such caveator or caveators, appellant or appellants, shall, within ten days after the filing of such caveat or appeal, enter into a bond, in the name of the Commonwealth of Pennsylvania, with at least two sufficient sureties to be approved by the register, in a penal sum of not less than five hundred dollars and not to exceed five thousand dollars, as may be determined by the said register, conditioned for the payment of all or any costs which may be occasioned by reason of such caveat or appeal, and which may be decreed by such register or by the orphans' court to be paid by such caveator or appellant, which bond shall remain on file in the office of such register.

(b) In case no bond, such as aforesaid, shall be filed with the register within ten days after the filing of any caveat or appeal, as aforesaid, such caveat or appeal shall be considered as abandoned, and shall be dismissed, and proceedings may be had in all respects as if no such caveat or appeal had been filed.

(c) Such registers of wills and the orphans' court of the proper county, in all cases of appeal from the decree of the register, shall have power, and they are

hereby directed, in all cases which may be instituted or adjudicated before them or any of them, and in all proceedings which may be had upon or by reason of any such caveat or appeal, to determine what amount of costs has been incurred or occasioned by the proceeding, and to direct by whom such costs shall be paid; and when such costs or any part thereof shall be finally adjudged and decreed to be paid by any caveator or appellant, as aforesaid, any party to whom such costs are due and payable, or who may have advanced money to pay the same as the proceedings shall have progressed, may institute an action in the proper court upon such bond for his own benefit, or that of all other parties interested, and may proceed thereon to final judgment and execution, if the same shall be necessary, as in other cases.

(d) All the orders and decrees of the said register of wills relating to the amount and sufficiency of the security to be required by this section and to the taxation of costs in proceedings upon caveats and appeals before him, as aforesaid, shall be subject to the right of appeal to the orphans' court of the proper county by or on behalf of any and every person, who may appear or have appeared before him as litigants, or who may be affected by such order or decree.

SECTION 21 (a) From all the judicial acts and proceedings of the several registers, including all decisions granting an issue devisavit vel non in a contest concerning the validity of a will, appeals may be taken to the orphans' court of the respective county within the term of two years: *Provided*, That any party entitled to appeal may be cited by such court to show cause why he should not appeal within six months from the date of such citation, and, on the failure of such party to show cause, said court may make an order limiting the time for such appeal by said party to said period of six months.

(b) No appeal from any decree of the register, concerning the validity of a will or the right to adminis-

ter, shall suspend the powers or prejudice the acts of any executor or administrator to whom letters have been granted.

SECTION 22. In counties wherein separate orphans' courts are now or may be established, the said courts shall establish a bill of costs to be chargeable to parties and to estates, for the probate of wills and testaments, and granting of letters testamentary and of administration, and for all the services of the register of wills of such county in the transaction of the business of his office: *Provided*, That the tax to be paid to and received by the register for the use of the Commonwealth shall not be less than the sum now or hereafter fixed by law: *And provided further*, That in counties wherein no separate orphans' courts have been or shall be established, the law as to fees to be charged by registers of wills shall remain as heretofore.

SECTION 23. Whenever any proceedings before a register shall be wholly ended, and the fees and costs accrued thereon shall remain, during the space of thirty days thereafter, due and unpaid, such register may file a bill thereof, under his hand and the seal of his office, in the orphans' court of the county; and upon the docketing thereof, an execution may be issued in the name of the Commonwealth, to levy the amount of the said bill, in like manner as executions may issue out of the orphans' court to enforce payment of decrees of that court for the payment of money.

SECTION 24. On the probate of any will, and the granting of letters testamentary thereon, also on the granting of any letters of administration, every register shall demand and receive for the use of the Commonwealth, in each case, the sum of fifty cents.

SECTION 25. This act shall be known and may be cited as the Register of Wills Act of 1917.

SECTION 26. The following acts and parts of acts of assembly are hereby repealed as respectively indi-

cated. The repeal of the first section of an act shall not repeal the enacting clause.

Sections 1, 2, 5 and 8 of an act entitled "An Act concerning the probates of written and nuncupative wills, and for confirming devises of lands," passed 1705, 1 Sm. L. 33, absolutely.

Sections 14, 15 and 16 of an act entitled "An Act for establishing orphans' courts," passed March 27, 1713, 1 Sm. L. 81, absolutely.

An act entitled "An Act for establishing in the city of Philadelphia, and in each county of this state, an office for the probate and registering of wills, and granting letters of administration, and an office for the recording of deeds," passed March 14, 1777, 1 Sm. L. 443, in so far as it relates to registers of wills.

Section 5 of an act entitled "An Act to confer on certain associations of the citizens of this Commonwealth the powers and immunities of corporations, or bodies politic in law," passed April 6, 1791, 3 Sm. L. 20, absolutely.

Section 2 of an act entitled "A Supplement to the act, entitled 'An act to establish the judicial courts of this Commonwealth, in conformity to the alterations and amendments in the constitution,'" passed September 30, 1791, 3 Sm. L. 58, absolutely.

Section 5 of an act entitled "An Act for the levy and collection of taxes upon proceedings in courts, and in the offices of register and recorder, and for other purposes," approved April 6, 1830, P. L. 272, absolutely.

Sections 1 to 5 inclusive, 7 to 13 inclusive, 17, 25, 31, 32, 36, 38, 39, 42, and 43 of an act entitled "An Act relating to registers and registers' courts," approved March 15, 1832, P. L. 135, absolutely.

Section 10 of an act entitled "An act supplementary to an act passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' courts,' and relating to contracts of decedents and escheats in certain cases,

and relative to the district court of the City and County of Philadelphia, and to registers of wills," approved April 3, 1851, P. L. 305, absolutely.

Sections 4 and 5 an act entitled "An Act for the preservation of the records of the courts," approved April 19, 1856, P. L. 458, absolutely.

Section 7 of an act entitled "An Act for the greater certainty of title and more secure enjoyments of real estate," approved April 22, 1856, P. L. 532, absolutely.

An act entitled "An Act relating to the fees and official bond of the register of wills in counties wherein separate orphans' courts are or may be hereafter established," approved March 24, 1877, P. L. 37, absolutely.

An act entitled "An Act to provide for the recording of inventories and appraisements of decedents' estates by the register of wills," approved June 24, 1885, P. L. 155, absolutely.

An act entitled "An Act to authorize registers of wills and orphans' courts to require security for costs, and to apportion costs in cases of caveats and appeals," approved June 6, 1887, P. L. 359, absolutely.

An act entitled "An Act to provide for the recording of exemplification of wills relating to real estate in the office of the register of wills for any county of this Commonwealth, in which said real estate is situate, and giving to the records of such exemplifications the same effect as the original wills or their duly certified copies or their records," approved April 23, 1889, P. L. 48, absolutely.

An act entitled "An Act requiring all public records within this Commonwealth to be kept in the English language," approved May 31, 1893, P. L. 188, in so far as it relates to wills and other instruments offered for probate or recording in the office of the register of wills.

An act entitled "An Act amending section seven of an act, entitled 'An Act for the greater certainty of title and more secure enjoyments of real estate,' ap-

proved twenty-second day of April, Anno Domini, one thousand eight hundred and fifty-six, relating to the time when the probate or refusal to probate a will shall be conclusive as to realty," approved June 25, 1895, P. L. 305, absolutely.

An act entitled "An Act authorizing appeals to orphans' courts from decisions of registers of wills, granting issues *devisavit vel non* in cases of contested wills," approved February 28, 1905, P. L. 26, absolutely.

An act entitled "An Act providing that the last will of any decedent, to be effective against *bona fide* conveyances or mortgages of the real or personal estate of the decedent, must be offered for probate within three years from the date of the death of the testator, or before the date of the recording of such conveyance or mortgage," approved April 1, 1909, P. L. 79, absolutely.

An act entitled "An Act to amend the second section of an act, approved the twenty-fourth day of March, Anno Domini one thousand eight hundred and seventy-seven, entitled 'An Act relating to the fees and official bond of the register of wills, in counties wherein separate orphans' courts are or may be hereafter established,' by removing the restriction as to population of the counties affected by the act," approved April 27, 1911, P. L. 87, absolutely.

All other acts of Assembly, or parts thereof, that are in any way in conflict or inconsistent with this act, or any part thereof, are hereby repealed.

ORPHANS' COURT ACT

AN ACT

Relating to the organization, jurisdiction and procedure of the orphans' courts, the powers and duties of the judges thereof, and appeals therefrom.

SECTION 1 (a) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That in every county of this Commonwealth, there shall continue to exist, as heretofore, a court of record, the name and style whereof shall be "The Orphans' Court of (the respective) County."

(b) In the counties of Philadelphia, Allegheny, Luzerne, Berks, Schuylkill, Westmoreland, Montgomery, Lancaster, Lackawanna and Fayette, the orphans' court shall be a separate court of record, which shall consist, in the county of Philadelphia, of five judges learned in the law, any one of whom may hold the said court, and hear and determine all matters and things therein cognizable, in the county of Allegheny of three judges learned in the law, any one of whom may hold the said court and hear and determine all matters and things therein cognizable, and in the counties of Luzerne, Berks, Schuylkill, Westmoreland, Montgomery, Lancaster, Lackawanna and Fayette, each, of one judge learned in the law; and the said judges shall be elected at the same elections, and be commissioned for the same term and in the same manner as the judges of the courts of common pleas of the respective counties where separate orphans' courts are or shall be established. In the counties where separate or-

phans' courts are or shall be established, the annual salaries of said judges shall be the same as are paid to the judges of the courts of common pleas in the respective counties where such orphans' courts are or shall be established, to be paid in the same manner as the salaries of said judges of the courts of common pleas are now, or may be by law, payable.

(c) The orphans' court of each county, except in the counties where separate orphans' courts are or shall be established by law, shall be composed of the judge or judges, when there are more than one, of the court of common pleas thereof; but any one judge learned in the law shall have power to hold the court, and hear and determine all matters and things therein cognizable.

(d) 1. In all counties in which there is or hereafter may be established a separate orphans' court, the governor shall issue a commission as president of said court, to the judge of said court, who shall be the oldest in commission and continuous service; and if there shall be two or more judges of any of said courts, whose commissions are of the same date, and whose term of service commenced at the same time, they shall draw lots for a commission as president of said court, and certify the result to the governor, who shall issue a commission as president of said court to the judge who shall draw the right to receive the same.

2. In all separate orphans' courts, composed of only one judge, he shall be styled the president judge of said court, and be commissioned as such.

3. When the president judge of any of said courts shall be re-elected, he shall be again commissioned as, and continue to be the president judge of said court; and when the said president judge shall go out of office, the judge of said court who shall be oldest in commission and continuous service shall be commissioned as, and be the president judge thereof.

4. Whenever, at any election, two or more judges of any of said courts are elected, who shall not have been

commissioned and served as judges of said court immediately before the commencement of the terms for which they were elected, they shall draw lots for priority of commission, and certify the result to the governor, who shall issue the commissions of said judges on different days, giving the priority of commission to the judge drawing the right to receive the same.

SECTION 2. The orphans' court of each county, whether separate or otherwise, is hereby declared to be a court of record, with all the qualities and incidents of a court of record at common law. Its proceedings and decrees, in all matters within its jurisdiction, shall not be reversed or avoided collaterally in any other court; but they shall be liable to reversal, modification or alteration on appeal.

SECTION 3 (a) Whenever, by reason of sickness, absence, interest or other cause, a judge of any separate orphans' court or a judge of the court of common pleas in a judicial district having no separate orphans' court, may be unable to sit in any matter depending in the orphans' court of such district, and there shall be no other judge of the orphans' court or of the court of common pleas of such district available for the purpose, it shall be lawful for said judge to call upon any judge of a separate orphans' court of any other judicial district of this Commonwealth, or any judge of the court of common pleas of any other judicial district having no separate orphans' court, to preside in and determine such matter, with the same force and effect as he, the regular commissioned judge of such district, if presiding, might do.

(b) Such judge of another judicial district called in as provided by clause (a) of this section shall be entitled to receive as compensation for so presiding, the sum of twenty dollars a day and carfare, and no more. No payment shall be made for any day consumed in such service of more than expenses and carfare, unless said judge, so assigned, actually presides in open court on such day.

SECTION 4 (a) The judges of the court of common pleas of any judicial district having a separate orphans' court shall, when called upon by the president judge of such separate orphans' court, as hereinafter provided, have power to hear and determine, when certified according to the provisions of clause (b) of this section, all matters, causes and things whatsoever, in such separate orphans' court, so fully and effectually, and to dispose thereof in the same manner, as may be done by the judges of said separate orphans' court sitting therein.

(b) Nothing in this section shall be construed to make it compulsory upon the judges of said court of common pleas to render the services aforesaid; but whenever the proper despatch of business requires it, and an arrangement can be made with a judge of such court of common pleas for such service, the president judge of the separate orphans' court of the said district may certify all matters to be heard and determined by such judge of the court of common pleas, specially presiding as aforesaid.

(c) In judicial districts having more than one judge of the separate orphans' court, whenever the president judge of such court shall be absent from the district or disabled by sickness, and occasion shall occur, it shall be competent for the judge next oldest in commission, being then in the district and able to act, to arrange for the services herein provided for, and to make the necessary certificates in like manner and to the same intent, effect, and purpose as the same could be done by the said president judge.

(d) No additional compensation shall be received by said judges of the court of common pleas for any service rendered in pursuance of this section; but they shall be entitled to be paid such mileage and other actual expenses as are provided by law for judges of this Commonwealth when holding court outside of the district for which they shall have been commissioned.

SECTION 5 (a) In addition to the powers now possessed and exercised by the judges of the separate orphans' court of this Commonwealth, said judges shall, when called upon by the president judge of the court of common pleas of the same judicial district, as hereinafter provided, have power to hear and determine, when certified according to the provisions of clause (b) of this section, all pleas, actions, causes, civil or criminal issues, and all issues and other matters in equity, in the court of common pleas, court of oyer and terminer and general jail delivery, and court of quarter sessions of the peace, for said judicial district, so fully and effectively, and to dispose thereof in the same manner, as may be done by the judges of the court of common pleas sitting in said courts.

(b) Nothing in this section shall be construed to make it compulsory upon the judges of said orphans' courts to render the services aforesaid; but whenever the proper despatch of business requires it, and an arrangement can be made with a judge of such orphans' court for such service, the president judge of the court of common pleas of the same judicial district may certify all matters or issues to be heard and determined by such orphans' court judge, specially presiding as aforesaid.

(c) In districts having one or more additional law judges, whenever the president judge shall be absent from the district, or disabled by sickness, and occasion shall occur, it shall be competent for the additional law judge, and in districts having more than one additional law judge, for the one oldest in commission, being then in the district and able to act, to arrange for the service herein provided for, and to make the necessary certificates in like manner, and to the same intent, effect and purpose, as the same could be done by the said president judge.

(d) No additional compensation shall be received by the said orphans' court judges for any service rendered

in pursuance of this section; but they shall be entitled to be paid such mileage and other actual expenses as are provided by law for judges of this Commonwealth when holding court outside of the district for which they shall have been commissioned.

SECTION 6. Every orphans' court shall have a seal for the use of the said court, having engraved thereon the same device as is engraved on the great seal of the State, together with the name of the respective court; and such seal may be renewed, under the direction of such court, as often as occasion shall require.

SECTION 7. The commissioners of the several counties wherein separate orphans' courts are now or hereafter shall be established shall provide proper and suitable apartments, as may be required by said courts, in which the business of said courts shall be held and conducted, and in which the records thereof shall be safely and securely kept.

SECTION 8 (a) The register of wills of each county in which a separate orphans' court is now or hereafter shall be established shall be clerk of such court and subject to its directions in all matters pertaining to his office; and he may appoint an assistant clerk or clerks, but only with the consent and approval of said court.

In each county having no separate orphans' court, a clerk of the orphans' court shall be elected and commissioned in accordance with the existing law.

(b) 1. In each county of this Commonwealth, the clerk of the orphans' court shall have the custody of the records and of the seal of the respective court, and keep the same at the place of holding such court, and in the apartments provided by law for that purpose; and he shall faithfully perform, under the direction of the court, all the duties appertaining to his office.

2. Said clerks are hereby authorized and required to keep, in dockets provided for the purpose, a full record of all proceedings of their respective courts, and place upon record, in a fair, legible hand, or in typewriting, in a book or books to be provided for that purpose, all

accounts of executors, administrators, guardians and trustees, as well as all reports of auditors appointed by said courts, respectively, omitting the testimony and documents accompanying the same; the fees for this service to be one-half of the amount now allowed by law for the recording of deeds.

3. Any person who shall offer any written or printed instrument to be filed in any orphans' court or in the office of the clerk of any orphans' court, which instrument shall be in any other than the English language, shall furnish at his own expense, to the clerk of such court, a sworn translation in English of such instrument thus offered, and the clerk shall attach or cause to be attached such translation to the original and file both the original and the translation of record in his office in all cases where filing is now or hereafter may be required by law, but in all cases where recording is now, or hereafter may be, required, both the original and the translation in English shall be recorded. Such clerk shall not file or mark filed, record or mark recorded, any written or printed instrument in violation of this clause, nor shall any paper filed or recorded in violation of this clause be notice to any person in any legal proceeding whatever, nor be received or considered in evidence in any proceeding at law or in equity.

(c) The separate orphans' courts of this Commonwealth may establish a bill of costs to be chargeable to parties and the estates before them for settlement, for the services of the clerks of said courts, respectively, in the transaction of business of said courts. In counties wherein no separate orphans' courts have been or shall be established, the law as to fees to be charged by clerks of the orphans' courts shall remain as heretofore.

SECTION 9. The jurisdiction of the several orphans' courts, whether separate or otherwise, shall extend to and embrace:

(a) The appointment, control, removal and discharge of the guardians of minors, and the settlement of their accounts:

(b) The appointment of trustees for any persons interested in the real or personal estate of any decedent, and the control, removal, discharge and settlement of the accounts of trustees so appointed and of testamentary trustees, whether the testamentary trustees be appointed *nominatim* or *virtute officii*.

(c) The appointment of trustees for absent persons, the control, removal and discharge of trustees so appointed, and the settlement of their accounts.

(d) The control, removal and discharge of executors and administrators, deriving their authority from the register of the respective county, and the settlement of their accounts.

(e) The distribution of the assets and surplusage of the estates of decedents among creditors and others interested.

(f) The sale of real estate of decedents for payment of their debts.

(g) The disposition of the title to real estate of decedents and of persons disabled from dealing therewith in order to render the same freely alienable and productive to the living owners thereof.

(h) The partition of the real estate of decedents among the parties entitled thereto, the valuation of such real estate, and the sale thereof for the purpose of distribution.

(i) The specific execution of contracts made by decedents to sell and convey any real estate of which such decedent shall die seised, and of contracts made by decedents to purchase any real estate.

(j) Proceedings for the collection or enforcement of payment or delivery of all legacies, whether pecuniary, specific or otherwise, and whether charged on real estate or not.

(k) Proceedings for the discharge of real estate of decedents from the lien of debts of decedents, and for

the discharge of real and personal estate from the liens of legacies, annuities, dower, recognizances and other charges.

(*l*) All cases within their respective counties, wherein executors, administrators, guardians or trustees may be possessed of or are in any way accountable for any real or personal estate of a decedent.

(*m*) All appeals from the orders or decrees of the register of wills of their respective counties, and all proceedings removed from said registers by certification.

(*n*) The exercise of all other powers needful to the doing of anything which is or may be hereafter required or permitted to be done in said court, whether incidental to the powers hereinbefore enumerated or in addition thereto.

And such jurisdiction shall be exercised under the limitations, and in the manner provided by law.

SECTION 10. The several orphans' courts shall have full power and authority to make, from time to time, such rules for regulating the practice thereof, respectively, and for expediting the determination of suits, causes and proceedings therein, as in their discretion they shall judge necessary or proper for the exercise of the powers hereby conferred or which may hereafter be conferred: *Provided*, That such rules shall not be inconsistent with the constitution and laws of this Commonwealth.

SECTION 11. The orphans' courts of every county of this Commonwealth shall be held during every term of the court of common pleas of the respective county and at such other times and as often as the judges thereof shall think necessary or proper.

SECTION 12 (*a*) In all cases in which heirs, legatees or distributees are interested, and in consequence of such interest, notice shall be required to be given to them or any of them, of any proceedings in the orphans' court, such notice shall, except in the case of the accounts of executors or administrators, and in

other cases specially provided for, be given in such manner, personally, by registered mail, or by publication, as shall appear to the court to be reasonable and proper, according to general rules adopted by the court, or special orders made by the court in particular cases.

(b) The judges of the respective orphans' courts shall have power, and are hereby authorized to make such rules and regulations as they may deem proper for the publication of advertisements of notices to parties in all cases within their jurisdiction: *Provided*, That said court shall have supervision of and regulate the cost of such publication in all cases, as well as by special order in particular cases, as by general rules.

SECTION 13. All process, subpoenas, certificates, copies of records and other documents, which shall be issued out of any of said courts, shall be attested in the name of the president judge thereof alone.

SECTION 14. The several orphans' courts shall have power to fix the return-days of all process issuing out of the respective courts, whenever such return-days are not otherwise provided for by law.

SECTION 15. The several orphans' courts of this Commonwealth shall have full power in vacation to administer the business of the court and to issue process: *Provided*, That said process shall be made returnable only in the county where the proceeding is pending.

SECTION 16. The said courts shall have power to prevent, by orders in the nature of writs of injunction, acts contrary to law or equity, prejudicial to property over which they shall have jurisdiction: *Provided*, That security may be required as in other cases of writs of injunction.

SECTION 17. The manner of proceeding in the orphans' court, to obtain the appearance of a person amenable to its jurisdiction, and the procedure in default of appearance, shall be as follows:

(a) On petition to the court of any person interested, whether such interest be immediate or remote, setting

forth facts necessary to give the court jurisdiction, the specific cause of complaint, and the relief desired, and supported by oath or affirmation, the orphans' court, or any judge thereof, may award a citation returnable at a day certain, not less than ten days after the issuing thereof.

(b) Such citation may be served by the party obtaining the same, or by any authorized agent, or, if required by the party, it shall be served by the sheriff or coroner, as the case may require, of the proper county.

(c) The manner of service shall be by giving a copy thereof to the respondent personally, or by leaving such copy with some adult member of his family, at his place of residence.

(d) Such service may be made anywhere within this Commonwealth; and if such party resides outside the Commonwealth and his place of residence is known and the proceeding concerns property situate within the Commonwealth, the court may, in its discretion, authorize service to be made on such party personally, wherever found, or by registered mail, or may direct notice to be given by publication in such manner as shall appear to the court to be reasonable and proper, according to general rules adopted by the court, or special orders made by the court in particular cases.

(e) If the respondent be not found, and have no known residence within the county, such citation may be served, in like manner, upon the person or persons who may be the surety or sureties of such party, in any bond or recognizance given by him for the performance of any trust or duty in respect to which such citation may have issued.

(f) The return to a citation, if made by the party on whose petition it issued, or his agent as aforesaid, shall be on oath or affirmation; and in all cases of service the return shall state how such citation was served.

(g) If the party to be cited cannot be found, and has no known residence, and there is no surety on whom service of the citation can be made as aforesaid,

and the facts shall be so stated in the return on oath or affirmation, by the party complaining, or by some one competent to make affidavit in that behalf, the orphans' court may award another citation or pluries citations, returnable in like manner with the first.

(h) At the time of awarding such second or further citation, the court may make an order for publication of the same, in such place or places, and for such length of time, as the court, having regard to the supposed place of residence of the respondent, and other circumstances, shall direct.

(i) 1. At the time appointed for the appearance of the respondent, should he not appear, according to the requisition of the citation, and if due proof be made of the service thereof, or, when service cannot be made, of the publication thereof, as hereinbefore prescribed, the court may, with or without another citation, as justice may require, proceed to make such order or decree in respect to the subject matter as may be just and necessary.

2. It shall be lawful for the court, on such proof, to order that the petition of the complainant be taken as confessed, and, in cases where there is personal service, to grant relief according to the prayer thereof. When there is no personal service the court shall, and when there is personal service the court may, in its discretion, hear testimony in support of the allegations of the petition, or direct a reference to a master or auditor to take proof of the facts and circumstances set forth in the petition, and to report thereon; and also to report an account against such respondent, if necessary. On the report of such master or auditor, the court shall make such order or decree as may be just and necessary.

SECTION 18 (a) Compliance with an order or decree of the court may be enforced:

1. By attachment of the person;
2. By sequestration of real or personal property;

3. In case of a decree for the payment of money, against a party who has appeared, the complainant may have a writ of execution in the nature of a writ of fieri facias against personal property only, which writ may be allowed by the court, or by any judge thereof.

4. Whenever any person against whom a decree for the payment of money has been made by any orphans' court is possessed of or entitled to any stock, deposits or debts due him, or to any legacy or interest in the estate of a decedent, the same may be levied on or attached in satisfaction of such decree, by the same process and in the same manner as is now or may hereafter be provided by law in the case of judgments of any court of common pleas. A writ of attachment for said purpose may be allowed by said orphans' court, or any judge thereof, as writs of fieri facias in said court are allowed, and may be served out of the county in which the same may be issued; but service on the party against whom such decree was made shall not be required, if he be not found in said county.

5. Writs of testatum fieri facias may be issued out of any orphans' court, in the same manner that writs of execution in the nature of writs of fieri facias are allowed by this act; and the sheriff, or other officer to whom any such writ is directed, shall proceed to levy and sell the personal property of the person or persons against whom the same shall be issued, in the same manner in all respects, as if such writ had issued out of a court of common pleas.

(b) 1. Writs of attachment of the person and sequestration shall be directed to and executed by the sheriff or coroner, as the case may require, of the proper county.

2. When any executor, administrator, guardian or trustee shall reside or move out of the county in which his appointment shall have taken place, or shall not possess real or personal estate in such county, sufficient to satisfy any decree or order of the orphans' court of such county, it shall be lawful for the orphans'

court of such county to issue process to the county in which such executor, administrator, guardian or trustee may be, or in which he may have any real or personal estate, amenable to such process; and such process shall be executed by the sheriff or coroner, as the case may require, of the county in which such executor, administrator, guardian or trustee may be, or may possess real or personal estate as aforesaid.

3. Writs of sequestration shall be in the following form:

The Commonwealth of Pennsylvania: To the sheriff of the County of _____, greeting: Whereas, A. B. (here set out the decree, or so much thereof as is material to explain the duty to be performed). Therefore we command you, that you do, at proper and convenient hours in the day-time, go to and enter upon all the messuages, lands, tenements and real estates of the said A. B., and that you do collect, take and get into your hands, not only the rents, issues and profits of all his said real estates, but also all his goods, chattels and personal estate, and detain and keep the same under sequestration in your hands; and also that you attach all stocks held by him in incorporated companies, and keep the same under attachment, until our said orphans' court shall make other order to the contrary; and you are to return with this writ an inventory or schedule of the property you have sequestered or attached, and a certificate under your hand of the manner in which you shall have executed this writ, to our said court, on the _____ day of _____ next. Witness, et cetera.

4. A sequestration shall not abate by the death of the complainant or respondent.

5. It shall be the duty of the sheriff or the coroner, as the case may be, immediately after receiving any such writ of sequestration, to file a copy thereof in the office of the prothonotary of the court of common pleas of the same county, who shall, forthwith, enter the substance thereof on his docket, with the names of the

parties, and index the same in the judgment index; and the entry thereof shall thenceforward operate to charge the real estate of the respondent, according to the form and effect of such writ, and shall bind the same in the hands of all purchasers and mortgagees, subsequently to such entry, without other notice: *Provided*, That if such sequestration shall be dissolved by the order of the orphans' court, the respondent, or any person interested in such real estate, may have a certificate of the same from the clerk of the said court, which it shall be the duty of such clerk to furnish, on application, and which, being entered on the docket of said court of common pleas, shall have the effect of a satisfaction of such lien.

6. When proof shall be made, on oath or affirmation, to the satisfaction of the court, or to any judge thereof, at the time of filing the petition as aforesaid, that the respondent has absconded or is about to abscond or depart from his usual place of abode, to the prejudice of the complainant, it shall be lawful for the court, or for such judge, to allow the issuing of a writ of attachment of the person, or a writ of sequestration, or both, in the first instance, against such respondent; and on the return thereof, the like proceedings may be had, as are authorized on the return of a citation.

7. If such attachment of the person or sequestration issued in the first instance be executed, the court, or any judge thereof, may dissolve the same, on the respondent giving security to the satisfaction of the court, or of such judge, to appear on a day certain to answer to the petition, and to abide the orders and decrees of the court in the premises.

8. Any person attached as for contempt in refusing to obey an order or decree of the orphans' court, whether for the payment of money or in any other case, may be discharged from custody by said court on his complying with the order or decree of the court, or paying the money for which such order or decree has been made, or upon his purging himself of contempt

to the satisfaction of the court by whose order he was attached.

9. When proof shall be made, on oath or affirmation, to the satisfaction of the court, or of any judge thereof, at the time of presenting a petition, or at any stage of the cause, that the party therein named has in his possession trust property or effects, which he is wasting or otherwise disposing of contrary to his duty and the trust, or that he is about to abscond and to carry such trust property or effects out of the jurisdiction of the court, it shall be lawful for the court, or such judge, to award a writ, in the name of the Commonwealth, to the sheriff or coroner, as the case may require, of the proper county, returnable on a day certain, commanding him to take possession of all such trust property and effects specified in such writ, and to hold the same subject to the order of the court, and also, to attach all debts due to such trust, whether by bond, mortgage or otherwise, and all stocks in incorporated companies, and serve a copy of such writ upon each debtor, and upon each company in which stock may be held belonging to the trust as aforesaid: *Provided*, That before the execution of such writ, the sheriff or coroner, as the case may be, may require of the party at whose instance such writ may have been issued, sufficient security to indemnify him against any damages arising from the execution thereof: *And provided also*, That if the party against whom such writ may issue shall give sufficient security to such sheriff or coroner, that the trust property or effects specified in such writ shall be forthcoming at the return thereof, then such sheriff or coroner shall not execute the same, but shall make return of the facts to the court.

10. The like proceedings may be had, where the court has made a final order and decree for the delivery of the trust property and effects, by the respondent, to any person who may be designated by law, or by the order of the court, to receive them.

11. On the return of such writ, the court may make such order respecting the disposition of such trust property and effects as may be necessary and proper, according to the principles of justice and equity.

12. When a decree shall have been made against any party who shall not have appeared according to the requisitions of the citation, and a sequestration shall have issued against the real or personal estate of such party, the court may order the decree to be satisfied out of the estate and effects sequestered: *Provided*, That such order shall not be carried into execution, until the complainant shall have given security, to the satisfaction of the court, to abide the order of the court, touching the restitution of what he may have received, in case the respondent shall appear, and be admitted to defend the suit; but if such security shall not be given, the estate and effects sequestered, or the proceeds thereof, shall remain subject to the direction of the court, to abide its further order.

13. If the party, against whom such decree shall have been made, or his representatives, shall, within one year after personal notice of such decree, and within five years after the entry thereof, when no notice shall have been given, present a petition to the same court, praying to be admitted to be heard, and shall pay such costs as the court shall adjudge, the party so petitioning shall be admitted to a defence, and the case shall then proceed, in like manner as if such party had appeared in due season, and no decree had been made.

14. If such party, or his representatives, shall not, within such period, present a petition as aforesaid, the court may make such final order and decree, both in respect to any estate or effects that may have been sequestered and in respect to the matters in controversy in the case, as may be according to justice and equity; and may, if necessary, award a writ in the nature of a fieri facias, in the manner hereinbefore provided, as in the case where the party appears.

(c) Each of the orphans' courts shall have power to award process, to levy and recover such fines, forfeitures and amercements as shall be imposed, taxed or adjudged by them respectively.

(d) Writs of fieri facias shall be directed to, and executed by the sheriff or coroner, as the case may require, of the proper county, and the proceedings thereon shall be the same as on writs of fieri facias against personal property issued by the court of common pleas of the same county.

(e) 1. It shall be the duty of the prothonotaries of the courts of common pleas to file and docket, whenever the same shall be furnished by any parties interested, certified transcripts of any definitive orders of the orphans' court of the same or any other county upon parties other than fiduciaries, to pay certain sums of money, which transcripts, so filed, shall constitute judgments, which shall be liens against the real estate of the persons ordered to pay from the time of such entry until payment, distribution or satisfaction. Executions may be issued thereon out of said court of common pleas against the real estate only of such persons, by any party or parties interested, for the recovery of so much as may be due to them respectively. The liens of such judgments shall cease at the expiration of five years from the time of the entry aforesaid, unless revived by scire facias in the manner by law directed in the cases of judgments of the courts of common law.

In case of an appeal from the orphans' court, the judgment shall be for no more than the amount finally decreed by the appellate court to be due; and it shall be the duty of the prothonotary of the common pleas, on such decree of the appellate court being certified to him, to enter on his docket the amount so found due and decreed by the appellate court. If such amount be greater than that decreed by the orphans' court, the judgment for such excess shall take effect only from the time of entering the decree of the appellate court;

but if the amount be reduced by the final decree of the appellate court, the prothonotary shall reduce the amount originally entered on his judgment docket and index accordingly; and such final decree, upon appeal, being certified and filed in said court of common pleas, the said term of five years shall be counted from the time of such entry.

2. When the person liable shall have fully paid and discharged the amount of such judgment, the parties who have received payment shall acknowledge satisfaction thereof, on the record of the court of common pleas. In case of neglect or refusal so to do, for the space of thirty days after request in writing and tender of all the costs, the orphans' court, on due proof to them made that the entire amount due from such person, according to the order of the orphans' court, has been fully paid and discharged, may make an order for his release from such recorded judgment, which order, being certified to the court of common pleas, shall be entered on their records and shall operate as a full satisfaction and discharge of such judgment.

SECTION 19. The fees to be taken by the sheriffs of each county for the services enjoined by this act shall be the same as those allowed for like services; and for executing a writ of sequestration the same fees shall be allowed as upon a writ of foreign attachment, together with reasonable costs and expenses, according to the discretion of the court. On all writs and process sent from another county, no mileage shall be allowed, except for the distance actually traveled, but an allowance shall be made for the transmission of such writs and process, to the clerk of the court from which they may have issued, at the common rates of postage.

SECTION 20 (a) Each of the orphans' courts of this Commonwealth is empowered to issue writs of subpoena, under its official seal, into any county of this Commonwealth, to summon and bring before the respective court, any person to give testimony in any

cause or matter depending before it, under the penalties that are or shall be appointed and allowed in any such case by the laws of this Commonwealth.

(b) 1. In all proceedings begun by petition, where an issue of fact is raised, it shall be within the discretion of the orphans' court, by general rule or by special order in the case, to provide for the reference of the case to a master to take the testimony and report his findings and his recommendations as to a decree, or to provide for the taking of depositions before a notary public or other official authorized to administer oaths and affirmations, or to provide for the taking of testimony before a judge of said court. The office of examiner in the orphans' court, appointed merely for the purpose of taking testimony, is hereby abolished, except in the cases mentioned in paragraph three of this clause, and except in cases where, at the time of the approval of this act, examiners have been appointed and are still in office.

2. Every orphans' court of this Commonwealth shall have power to make rules regulating the taking of depositions of aged, infirm and going witnesses, and the issuance and execution of commissions to take testimony and letters rogatory.

3. Where the testimony of any witness is desired to be read in evidence in any proceeding now or hereafter pending in any orphans' court of this Commonwealth, and such witness resides in any other state, territory or possession of the United States of America, or in any foreign country, the court may, on the application of any party, provide for the taking, in such other state, territory, possession or foreign country, of the testimony of such witness or witnesses orally, before an examiner appointed by the court, or before any person authorized by the laws of such other state, territory, possession or foreign country to administer oaths. In granting any such application the court may impose such terms as it shall deem proper, as to the payment by the party applying therefor of the costs and ex-

penses involved, including reasonable counsel fees and traveling expenses, and may prescribe the notice to be given and the time within which such testimony shall be taken.

(c) The orphans' court shall have power to compel the production of any books, papers or other documents, necessary to a just decision of the question before them, or before an auditor or master.

(d) Every orphans' court of this Commonwealth shall have the jurisdiction and powers of a court of chancery, so far as relates to the perpetuation of testimony in all cases, including cases of lost or destroyed records of such court, whether such records were lost or destroyed before or after the passage of this act, and the same proceedings, orders, decrees and judgments shall be had under this section, *mutatis mutandis*, as in cases now authorized by law, and with the like effect; and when proved, such records shall have the same legal operation as the original records would have had. Notice of any proceeding under this clause shall be given to all persons interested, or their guardians or committees.

(e) 1. On appeal from the decision of any register of wills, or in proceedings removed from any register of wills by certification, the orphans' court shall hear the testimony *de novo*, unless all parties appearing in the proceedings shall agree that the case shall be heard on the testimony taken before such register: *Provided*, That in all cases the court shall have power to require the production before it, for examination, of the witnesses already examined, or of any other witnesses.

2. The testimony of all witnesses examined in any cause litigated before any orphans' court on appeal from any register of wills, or on removal from any register of wills by certification, shall be taken in writing and made a part of the proceedings therein, upon which testimony the court having jurisdiction of such cause by appeal may affirm, reverse, alter or modify the decree of the orphans' court.

SECTION 21 (a) The orphans' court shall have power to send an issue to the court of common pleas of the same county for the trial of facts by jury, whenever they shall deem it expedient so to do.

(b) Whenever a dispute upon a matter of fact arises before any orphans' court, on appeal from any register of wills or on removal from any register of wills by certification, the said court shall, at the request of either party, direct a precept for an issue to the court of common pleas of the county for the trial thereof, which, in the case of an issue devisavit vel non, shall be substantially in the following form: (L. S.)

County, ss. The Commonwealth of Pennsylvania: To the judges of the court of common pleas of the said county, greeting: Whereas, A. B., on the day of , in the year, et cetera, presented to G. H., our register of wills of said county, for probate, a certain writing hereto annexed, purporting to have been made the day , in the year, et cetera, (or otherwise describing the paper in question), which said writing the said A. B. avers is the last will and testament of the said C. D., and whereas E. D., who is a son and heir of the said C. D. (or intermarried with F. D., who is a daughter and heir, et cetera, according to the fact), hath objected before our said register that the said writing was procured by duress and constraint (stating the matters of fact objected), and whereas our said register hath admitted (or refused to admit) said writing to probate as the last will and testament of the said C. D., and whereas the said E. D. hath appealed from the decree of our said register to our orphans' court for the said county (or as the case may be) and whereas the said E. D. (or A. B.) hath requested that an issue may be directed into our said court of common pleas to try by a jury the validity of the said writing, and the matters of fact which may be objected thereto in our said court; therefore, we command you that you cause an action to be entered upon the records of our said court, as of the day of the delivery of this our precept

into the office of the prothonotary of our said court, between the said A. B. and the said E. D., so that an issue therein may be formed upon the merits of the controversy between the said parties, and tried in due course according to the practice of our said courts in actions commenced by writ; and further, that you cause all other persons who may be interested in the estate of the said C. D., as heirs, relations or next of kin, devisees, legatees or executors, to be warned, so that they may come into our said court and become a party to the said action, if they shall see cause, and that you certify the result of the trial so had in the premises into our said orphans' court. Attest. I. J., President Judge of the said Orphans' Court of the said county.

Where the issue directed is other than an issue *devisavit vel non*, the foregoing form shall be changed, so far as necessary, in accordance with the circumstances of the case.

And the facts established by the verdict returned shall not be re-examined in any appeal.

(c) 1. Before an issue shall be directed upon the distribution of money arising from any sale of real estate made under order of the orphans' court, the applicant for such issue shall make affidavit that there are material facts in dispute therein, and shall set forth the nature and character thereof, upon which affidavit the court shall determine whether such issue shall be granted, subject to appeal by such applicant, if the issue be refused, in like manner as in other cases in which such appeal is or may be allowed by law.

2. Upon granting any such issue, it shall be discretionary with the court, upon the application of the party or parties appearing, by the record, *prima facie* entitled to the said fund, to order the same to be invested, *pendente lite*, in investments allowed by law in the case of trustees.

SECTION 22 (a) Any party aggrieved by the definitive sentence or decree of any orphans' court, or his legal

representatives, may appeal therefrom to the proper appellate court within six months from the time of pronouncing such final sentence or decree: *Provided*, That no appeal from any decree of such court, concerning the validity of a will, or the right to administer, shall suspend the powers or prejudice the acts of any executor or administrator to whom letters have been granted: *and Provided further*, That no reversal or modification of any decree or proceedings of the orphans' court, for the sale of real estate, shall have the effect of divesting any estate or interest acquired under such decree or proceeding, by persons not party thereto, where the orphans' court had jurisdiction of the case.

(b) The supreme and superior courts of this Commonwealth shall, in all cases of appeal from the definitive sentence or decree of the orphans' court, hear, try and determine the same as to right and justice may belong, and decree according to the equity thereof; and may refer the same to auditors when, in their discretion, they may think proper.

SECTION 23. This act shall be known and may be cited as the Orphans' Court Act of 1917.

SECTION 24. The following acts and parts of acts of assembly are repealed as respectively indicated. The repeal of the first section of an act shall not repeal the enacting clause of such act.

Sections 1, 8 and 9 of an act entitled "An Act for establishing orphans' courts," passed March 27, 1713, 1 Sm. L. 81, absolutely.

Sections 5, 6 and 18 of an act entitled "An Act to establish the judicial courts of this Commonwealth, in conformity to the alterations and amendments in the constitution," passed April 13, 1791, 3 Sm. L. 28, absolutely.

Section 24 of an act entitled "An Act directing the descent of intestates' real estates, and distribution of their personal estates, and for other purposes therein

mentioned," passed April 19, 1794, 3 Sm. L. 143, absolutely.

Sections 40, 41 and 42 of an act entitled "An Act relating to registers and registers' courts," approved March 15, 1832, P. L. 135, absolutely.

Sections 1 to 4 inclusive, 52, and 55 to 60 inclusive of an act entitled "An Act relating to orphans' courts," approved March 29, 1832, P. L. 190, absolutely.

Sections 52 to 57 inclusive of an act entitled "An Act relative to the organization of the courts of justice," approved April 14, 1834, P. L. 341, absolutely.

Section 4 of an act entitled "Supplement to the act passed the twenty-ninth day of March, Anno Domini, one thousand eight hundred and thirty-two, entitled 'An Act relating to orphans' courts,' " approved April 14, 1835, P. L. 275, absolutely.

Section 2 of an act entitled "An Act supplementary to the various acts relating to orphans' and registers courts, and executors and administrators, and the act relating to the measurement of grain, salt, and coal," approved June 16, 1836, P. L. 682, absolutely.

Section 19 of an act entitled "An Act relating to the jurisdictions and powers of courts," approved June 16, 1836, P. L. 784, absolutely, and Sections 21 and 22 of the same act in so far as they relate to the orphans' court.

Section 8 of an act entitled "An Act to confer upon the orphans' court of Lancaster County certain powers in relation to the real estate of John Lindemuth, deceased, and for other purposes," approved April 4, 1843, P. L. 131, in so far as it relates to the orphans' court.

Sections 2 and 3 of an act entitled "An Act relative to lien creditors becoming purchasers at judicial sales, and for other purposes," approved April 20, 1846, P. L. 411, in so far as they relate to the orphans' court.

Section 2 of an act entitled "A further supplement to an act, entitled, 'An Act relating to executions,'

passed the sixteenth day of June, one thousand eight hundred and thirty-six," approved April 21, 1846, P. L. 430, absolutely.

Section 18 of an act entitled "An Act relating to the bail of executrixes; to partition in the orphans' court and common pleas; to colored convicts in Philadelphia; to the limitations of actions against corporations; to actions enforcing the payment of ground rent; to trustees of married women; to appeals from awards of arbitrators by corporations; to hawkers and pedlers in the counties of Butler and Union; to the payment of costs in actions by informers in certain cases; to taxing lands situate in different townships; and in relation to fees of county treasurers of Lycoming, Clinton and Schuylkill; to provide for recording the accounts of executors, administrators, guardians and auditors' reports; and to amend and alter existing laws relative to the administration of justice in this Commonwealth," which became a law April 25, 1850, by reason of the Governor's failure to return it within ten days, P. L. 569, absolutely.

Section 1 of an act entitled "An Act relating to official seals," approved March 6, 1854, P. L. 155, in so far as it relates to the orphans' court.

An act entitled "An act relative to the perpetuation of testimony in cases of lost records," approved April 1, 1863, P. L. 205, absolutely.

Sections 2, 3, 4, and 6 to 10 inclusive of an act entitled "An Act relating to the organization and jurisdiction of orphans' courts, and to establish a separate orphans' court in and for counties having more than one hundred and fifty thousand inhabitants, and to provide for the election of judges thereof," approved May 19, 1874, P. L. 206, absolutely.

An act entitled "An Act authorizing the holding of orphans' courts by other than the regularly commissioned judges in certain cases," approved March 4, 1875, P. L. 5, absolutely.

An act entitled "An Act relating to orphans' courts," approved March 18, 1875, P. L. 29, absolutely.

An act entitled "An Act authorizing the president or additional law judges of the courts of common pleas to hold courts of quarter sessions, and oyer and terminer and orphans' courts, in certain cases," approved April 7, 1876, P. L. 19, in so far as it relates to the orphans' court.

An act entitled "An Act to provide for the appointment of a president judge of the separate orphans' courts, and to provide for the commission thereof," approved May 24, 1878, P. L. 131, absolutely.

An act entitled "An Act to regulate the compensation of auditors and commissioners," approved June 4, 1879, P. L. 84, in so far as it relates to auditors and commissioners appointed by the orphans' court.

An act entitled "An Act to amend section three of the act of assembly of May nineteenth, one thousand eight hundred and seventy-four, entitled 'An Act relating to the organization and jurisdiction of orphans' courts, and to establish a separate orphans' court in and for the counties having more than one hundred and fifty thousand inhabitants, and to provide for the election of judges thereof, fixing the salaries of judges of separate orphans' courts,' " approved June 13, 1883, P. L. 91, absolutely.

An act entitled "An Act relative to the transfer of orders and decrees for the payment of money for the purpose of lien and execution into other counties than those where they were originally rendered," approved June 5, 1885, P. L. 78, in so far as it relates to orders and decrees of the orphans' court.

An act entitled "An Act relative to the granting of citations and rules to show cause, by the courts of this Commonwealth," approved May 7, 1889, P. L. 102, in so far as it relates to the orphans' court.

An act entitled "An Act requiring all public records within this Commonwealth to be kept in the English language," approved May 31, 1893, P. L. 188, in so

far as it relates to papers filed or recorded in the orphans' court or the office of the clerk thereof.

An act entitled "An Act to authorize the judges of separate orphans' courts to hear and determine proceedings in equity, at the request of the judges of the common pleas," approved April 18, 1905, P. L. 208, absolutely.

An act entitled "An Act authorizing the parties in interest, or their counsel, to select auditors and masters needed in judicial proceedings; except in divorce cases," approved April 1, 1909, P. L. 95, in so far as it relates to proceedings in the orphans' court.

An act entitled "An Act to provide for the taking of testimony to be used in any of the civil courts of record in this Commonwealth of witnesses residing in any other state or in any foreign country," approved June 8, 1911, P. L. 709, in so far as it relates to the orphans' court.

An act entitled "An Act to authorize the judges of separate orphans' court, at the request of the judges of the common pleas, to hear and determine all issues in the court of common pleas, courts of oyer and terminer and general jail delivery, and courts of quarter sessions of the peace," approved July 19, 1913, P. L. 844, absolutely.

An act entitled "An Act to authorize the judges of the courts of common pleas, of judicial districts having separate orphans' courts, to hear and determine all matters in such courts, at the request of the judges thereof," approved April 21, 1915, P. L. 156, absolutely.

All other acts of Assembly, or parts thereof, that are in any way in conflict with this act, or any part thereof, are hereby repealed.

INTESTATE ACT.

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